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The Nation.
May 26, 1979 $1

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EDITORIAL

WHO'S THE RATIONER?

The year: 1942. Even though the United States was the world's leading producer of oil, voracious demands of the war machine would eat up 30 percent of gasoline supplies; worse, Japanese conquests in South Asia had cut off 97 percent of our rubber. Obviously, conservation was necessary, and the only way this could be accomplished was by gasoline rationing. Yet Congress backed and filled and President Roosevelt himself waffled. Even in wartime, rationing was politically unpopular; but when it came, it did the job.

Thirty-seven years later, out of a similar political timidity, the House of Representatives rejected an emergency gas rationing plan. And so the nation stumbles toward the next energy "crisis" that the producers and oil companies contrive with no plan for national conservation that would allocate scarce supplies with reasonable fairness, rather than solely on ability to pay.

One cannot expect gas rationing to be popular—especially when the President can articulate no moral equivalent of Pearl Harbor, his Secretary of Energy's credibility is at a nadir and there is a suspicion abroad in the land that the Iranian cutoff gave OPEC and the oil companies a pretext to withhold stocks and reap windfall profits (see "The Phony Oil Crisis," Peter Deutsch, *The Nation*, April 21).

And so what we are left with is the Administration's plan of conservation by inflation. But let's not kid ourselves. We already have rationing—rationing by OPEC, rationing by oil companies, rationing by gas station operators, rationing by lines at the gas pump, rationing by hoarding and, in a crunch, rationing by numerology, California-style. Rationing, in other words, in everybody's interest but the public's.

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Stephan Salisbury

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Stephen Jay Gould

CLURMANIA
Arthur Miller

THE *WEBER* CASE

ANOTHER STEP BAKKE-WARDS

HERMAN SCHWARTZ

"You can't avoid discrimination by discriminating." That was how Brian Weber's lawyer challenged the racial quota in Kaiser Aluminum and Chemical Corporation's affirmative action program, when arguing before the Supreme Court this March. Whether that really is the question and how the Court decides the case will affect more than 30 million American workers involved in thousands of public and private affirmative action plans. The Court's decision could be the most important employment discrimination ruling in recent history.

The story begins in 1973. Congress had recently tightened up Title VII of the 1964 Civil Rights Act, barring discrimination in employment. Kaiser faced numerous Title VII suits with potentially huge back-pay liabilities; the Federal Contract Compliance Office was making ominous noises about barring Kaiser from Federal contracts if it didn't increase the number of black skilled craft workers. As one Kaiser official put it: "If we did not do something on our own, the Government was going to do it for us . . . [which would be] one heck of a lot worse."

The crafts had always been almost all-white. Craft workers are trained, not born, and training had traditionally been in the hands of the building-trades unions, which were notoriously hostile to blacks. In the area surrounding Kaiser's Gramercy, La., plant where the *Weber* case comes from, 39 percent of the work force was black, but there were just five blacks among the plant's 273 craft workers. Kaiser had been

(Continued on Page 602)

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LETTERS.

DISAPPOINTED

Florida City, Fla.
What a disappointment was the April 7 issue of *The Nation*. We lost letters to the editor for the "Symposium" by the Edison Electric Institute (not even identified as an advertisement).

Another disappointment was Irving Horowitz's "Religion and the Rise of the Rev. Moon." Like so many who discuss our numberless cults, Horowitz failed to point out the underlying cause for the success of cults: profitability. Take the profits out of cults and they would drop to insignificance. . . .

The only answer is to treat all religions the way the Constitution intended: tax them like any other organization. . . . As a lifetime member of an established church, I would welcome an honest taxing of our financial activities. This would separate the truly religious organization from those founded primarily for profit and power. . . .

William M. Wilkerson

Chicago
I am writing to express my deep disappointment with the advertising in the April 7 issue of *The Nation*. It is inexcusable for a journal of *The Nation*'s stature to eliminate the letters column for two weeks in a row. But even worse was the "Symposium" that occupied the middle of the issue. It is an insult to your readers to pass off a glossy, four-color ad as something other than what it is. I realize you have had a great deal of controversy lately about your advertising policy. Much of the discussion would be resolved if ads were kept where they belong.

Jennifer A. Gordon

The Edison Electric glossy insert was so glossy we assumed all readers would instantly recognize it as an ad, and most did. Because it was an insert, it was an addition to our usual thirty-two pages rather than in place of them. When we lose our letters page, as we occasionally do, it is to make space for additional material—sometimes editorial and sometimes advertising (which helps pay the electrical bills)—in the body proper.. —*The Editors*

ONGOING *ANTIOCH REVIEW*

Yellow Springs, Ohio
Could we ask you to correct a vital statistic published in Lawrence Grauman Jr.'s author's note ["Out of the Modernist Box," *The Nation*, April 21]? It refers to the "late" *Antioch Review*. The *Antioch Review* fortunately survived the editorship of Lawrence Grauman Jr., and continues to be published.

Irwin Inman
Managing Editor

FISH FOLLOW-UP

Lake Forest, Ill.
Your "Fish Story" [editorial, *The Nation*, March 24] about John McPhee's much-discussed *New Yorker* profile of chef "Otto" really requires one further qualification: whether the turbot at a Manhattan "frog pond" is frozen or fresh, the essay by McPhee was a superb piece of reporting.

I harbor two regrets about this small affair. Foremost, I fear that John McPhee, whose work *The Nation* correctly describes as "superlative," may not be published again in *The New Yorker*, a magazine that has been most appropriate for his reportorial style. Second, I lament what happened to the owners of Otto's—whatever Mimi Sheraton's opinion of their cuisine—for having their much-valued anonymity uncovered by pseudo-investigative journalists. *Michael H. Ebner*

TABLE SALT

Occidental, Calif.
Awaiting the coming debate over Salt II, I find information and analysis of even such "factual" matters as military strength to be at best spotty and polemical. This was illustrated in the exchange between Irving Horowitz and Michael Klare ["Letters," *The Nation*, March 17]. Horowitz asserted that "the Soviet Union is out in front in every single category save nuclear warheads" and Klare replied that this was "pure bunkum" and called Horowitz's statistics "bogus." One of them must be mistaken.

In all the debate over the military balance, I have yet to see reference to the comparative spending levels of NATO and the Warsaw Pact. The enclosed chart from the 1978 *Statistical Abstract of the United States* shows that NATO countries have consistently spent more on the military than Warsaw Pact countries, at least through 1976. . . .

These figures do suggest an overall situation that is quite favorable to NATO countries, and at the same time must be very disconcerting to the Soviet Union. Beyond this lies the debate over intentions, where "facts" become incidental. . . .

Glen Schneider

1976 Military Expenditures, by country, with % of G.N.P.
(Billions of current U.S. dollars)

NATO countries		% of G.N.P.	Warsaw Pact countries		% of G.N.P.
United States	91.0	5.4	Soviet Union	127.0	12.6
United Kingdom	12.6	5.2	Poland	5.45	5.9
West Germany	16.0	3.4	East Germany	4.29	6.5
France	14.2	3.8	Czechoslovakia	3.23	5.6
Canada	3.37	2.0	Hungary	1.45	5.4
Italy	4.98	2.7	Rumania	2.33	4.4
Denmark	.96	2.5	Bulgaria	1.81	8.7
Belgium	2.1	3.1			
Netherlands	3.18	3.3			
Greece	1.2	5.1			
Turkey	2.34	5.6			
Norway	.997	3.2			
Portugal	.66	3.9			
Others	.42				
Total	154.0	4.6	Total	146.0	11.0

Total NATO G.N.P.: 3,348 Billion
Total Warsaw Pact G.N.P.: 1,327 Bil.

(World average military expenditures as % of G.N.P.: 5.8%)

Military outlays of Japan (1976): 5.1 Billion (.9% of G.N.P.)
Military outlays of China (1976): 34.4 Billion (10.7% of G.N.P.)

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EDITORIALS.

Kissinger's Dream

It would be sensible to cut the "L" for "limitation" out of the SALT II treaty and call it simply SAT. But such an Orwellian purification of the terms in which the strategic arms treaty with the Russians is being kicked around, as against debated, is too much to expect. There had to be the sweetener of "limitation" in there if the deal were to have any chance at all of sidling by a posturing Senate.

Not much, of course, is in fact limited by this instrument. Under its "ceilings" there is plenty of room for additions to the destructive quality of the nuclear arsenals of both sides. The two scorpions in the bottle will go on flexing their claws at each other, but with more precision. The best argument for the treaty remains that without it there would be no way of measuring the pace of the approach to Armageddon and therefore no possible check on that fateful advance.

In the current discussion it is disturbing to note how often the idea of actually fighting a nuclear war is considered. That used to be out of the question. Deterrence (which really amounted to the threat of destruction), mutual and assured and called MAD, was the relatively sane way we found to deal with the awful force we had unleashed. But now Kissinger's old dream of somehow taming our fears and thus making nuclear war credible has come back to haunt us.

A century and a half ago Clausewitz wrote that "absolute—so-called mathematical—factors never find a firm basis in military calculations." That wisdom, which still applies, has not stopped the figurers of the Committee on the Present Danger and their allies in virility from their horrendous and misleading calculations. "In the whole range of human activities," wrote Clausewitz before there was even a machine gun, "war most closely resembles a game of cards." In this particular game called SALT, we have been dealt a bad hand, but it is the only game in town.

The Russians peering over the Kremlin's walls choose to regard the American ratification more as a

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play. *Izvestia* comments that "On Capitol Hill, there will be a very dramatic battle, one of the more serious in American history." Serious it certainly is, despite the prominence of clowns on stage.

As for the audience, the sacrificial victims if the players up there forget their lines or business, it remains hopeful and thus favors an agreement, as the polls all show. The public knows that Carter has already paid a high price for the chance of ratification with the decision to go on increasing "defense" expenditures, done to show that he is not "soft" on the Soviet threat. It will watch the great charade in the Senate in the discomforting certainty that the cost of this sort of truce is the maintenance of an aggressive posture in the world despite all the risks.

Contamination By Technology

Conceived two decades ago as a beautiful dream of harnessing the atom for peaceful purposes and generating energy "too cheap to meter," Atoms for Peace has come to be synonymous with Bombs for Sale. The beautiful dream has become a nightmare.

Witness India, which joined the nuclear club in 1974 by exploding a 15-kiloton device (slightly larger than the Hiroshima bomb) built with materials and technology supplied by the United States and Canada. In response to American and Canadian protests, the Indian Government claimed that it had been a "peaceful nuclear explosion" and boasted that the development costs were only $400,000, once the civilian nuclear technology was in place. A steal of a deal. India is now involved in second-generation proliferation, negotiating nuclear aid to Argentina.

Immediately following the Indian test, the Prime Minister of neighboring Pakistan pledged that Pakistan too would get the bomb, even if "our people have to eat grass." Aware that atom bombs are not built with grass alone, the Pakistani Government immediately set out to acquire the necessary technology by negotiating the purchase of a plutonium reprocessing facility from the French, promising all the while that Pakistan was only interested in the "peaceful" uses of the atom. (The deal was termed an economic absurdity by American experts given the magnitude of the reprocessing facility—ten times too large for civilian Pakistani reactor requirements.)

Around the time the technology was being readied for shipment, the author, who had gained some international notoriety for having designed an atomic bomb as an undergraduate at Princeton, received a telephone call from a representative of the Pakistani Government, although he did not at first identify himself as such. He commended me for my brilliance and then asked me for a copy of my design. When I refused, he told me he would make it worth my while. I terminated the conversation and immediately notified a United States Senator, who in turn notified the F.B.I. The F.B.I. agent who was sent to Princeton to see to my protection told me that this sort of activity was not at all unusual. "We see this all the time," he told me. "The third-world countries are tripping over themselves and each other to get the bomb." In large part because of international pressure applied to the French Government, and in small part due to the publicity the deal received when the caper involving me was disclosed by Senator William Proxmire, the French-Pakistani deal subsequently fell through.

Nonetheless, eleven countries now have sufficient reprocessing facilities and separable plutonium for making three to six nuclear weapons each, including Iran, South Korea, Pakistan, Taiwan and Argentina. Brazil has the reprocessing facilities and separable plutonium for turning out thirty to sixty nuclear weapons. Israel and South Africa have a half-dozen bombs between them which they have not tested.

The only glimmer of hope is continuing pressure by the United States upon whichever of our allies has a mind to export plutonium technology. The export of all types of nuclear technology must be curtailed.

Furthermore, the superpowers must begin the process of real disarmament, swearing off the destructive power and implied prestige of having the bomb. Buried in Article VI of the Non-Proliferation Treaty is the agreement that "Each of the parties to the treaty undertakes to pursue negotiation in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, as well as on a treaty on general and complete disarmament under strict and effective international control." To the extent that the Strategic Arms Limitation Talks indicate a willingness of the superpowers to begin real disarmament, they can decelerate the proliferation of atomic weapons.

JOHN ARISTOTLE PHILLIPS

John Aristotle Phillips, 23, is the co-author of Mushroom *(William Morrow & Company).*

IRANIAN WOMEN

Distorted Images

It's an old story. Women who have struggled side by side with men for political freedom and human rights find themselves excluded and their own rights abridged when the new system is established. But in Iran, women were pushed aside more precipitously and explicitly than they usually are.

The women's movement in Iran—like women's movements throughout history—is integrally related to broad and deep political change. All societies and religions have distinguished between males and females in their legal systems and customs. As a key

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step in legitimizing an Islamic state, Ayatollah Khomeini sought to exert specific controls over women's behavior. Iranian women and men who had allied themselves with Khomeini in the struggle against the Shah, and who are pious Moslems, took to the streets in protest against Khomeini's proclamations on female behavior. These men and women clearly do not believe that piety requires such strict regulations of female behavior, nor indeed does the Koran mandate it. The Koran has always recognized women's economic roles and property rights; it does not—contrary to popular belief—prescribe female circumcision and seeks in many ways to raise the status of women.

The concern for women's rights has intensified the collision between forces advocating a religious state and those in favor of a secular one. The protesting Iranian women are demanding the right to choose appropriate attire; equal civil rights; political, social and economic freedom and reinstatement of the family protection law. If Khomeini's Islamic state does not guarantee these freedoms, the women will have no choice but to press for a new Constitution or a secular state. But neither course of action would require a disavowal of Islam if the religion's positive interpretation of women's rights is adhered to.

The Iranian women's list of demands suggests that rights are a complex package, each component of which is necessary but not sufficient for achieving full and equal status for women. Women cannot hope to exercise civil and political rights unless they can insure their own and their children's economic security.

Given the complexities of the situation, what role if any should outsiders play in Iran? The press has, in the last several years in particular, fostered an image of women in Islamic societies as veiled, dependent and totally without civil rights. There has been virtually no recognition that women's rights movements have long been active in the Islamic world. In 1922, Iranian teachers and headmistresses started a group called "Patriotic Women," to protest against the veil and all superstitions about women. Further, the press has often used superficial images of women to describe a nation as "traditional" or "modern." More people know that Saudi women can't drive cars than know Riyadh is the capital of Saudi Arabia. A modern China is one in which women go to the beauty parlor. Such distorted images of women and their roles is neither a substantive comment on the society under discussion nor the expression of any real concern with women's roles and rights, and even may be counterproductive. If Western press comment seems self-righteously to suggest that the only equitable approach to women's rights derives from Western values, we can expect Moslems and Iranians especially to pay us little heed.

Islamic religious authorities, on their part, could undertake to clarify the position of women under Islam. For example, Al Azhar (the highest body of scholarly thought and opinion in Islam, established in A.D. 978 in Cairo) has not aggressively dissociated Islam from such practices as female circumcision, nor has it taken visible steps to support those whose civil liberties are being attacked under the cover of Islam. Such clarification would certainly not guarantee equality for women but it would serve as a scholarly resource for women and men who wish to challenge individual interpretations of Islam.

Feminists from other countries can play a role but need to be keenly sensitive to local situations. The presence of feminists from Islamic-Arabic-West Asian countries is likely to be better received in Iran than the presence of Western feminists. This is true because the latter tend to generate the kind of press coverage that infuriates Iranians and Arabs and non-Westerners and, more important, overshadows the indigenous movement.

Support by Western feminists from a distance is, however, very helpful. The rallies held in support of women in Iran in the United States (for example, the March 15 rally in New York City) circulated a petition which very wisely supported the demands of the Iranian women themselves, as listed above. Such support helps keep attention focused on the struggle in Iran, which may help insure the physical safety of the leadership of the movement. Communications, material and emotional support from the West also help. These strategies have been useful in protecting political protesters in other countries. Concern for activists in the movement should continue after the demonstrations have stopped and the spotlight moved elsewhere.

International human rights bodies should actively recognize and seek to ameliorate the condition of the women in all countries of the world and under various religious systems who suffer infringement of their basic human rights because they are women. Such women are subject to life-threatening conditions (child marriage; prohibition of access to safe, effective means of birth planning including abortion; circumcision, arbitrary violence including abuse by husbands; rape and even murder). They are systematically excluded from political processes regardless of class; they may have the vote but little or no representation. Finally, it is of critical importance in interpreting human rights in developing countries to recognize that women often can neither exercise nor defend the rights they are legally given because of their lack of economic power. Thus, an assessment of human rights—if it is to benefit women fully—must go beyond the numbers of political prisoners, voters' rights and processes, etc., to examine the social and economic constraints experienced by women exclusively. Without such a redefinition of "human rights," women will remain substantially outside the sphere of action of the international human rights movement.

JUDITH BRUCE

Judith Bruce has been working in the area of economic development with special concern for women for the last six years.

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Omega-7

On April 28, while driving alone in a San Juan suburb, Carlos Muniz, 26 years old, was shot by three assailants who fired gangland fashion from their own moving car into his. Muniz died twenty-four hours later. He had been president of a travel agency in Puerto Rico that arranges trips to Cuba for members of the Cuban exile community, which numbers about 40,000 people in Puerto Rico, depending upon whose figures you use. He was also a member of the Antonio Maceo Brigade, an organization of approximately 250 young Cubans who left the island shortly after the revolution with their parents and families and who now wish to learn about present-day life in the Cuba they left as children. Credit for Muniz's murder was claimed by Omega-7, an anti-Castro terrorist group with links to the Cuban Nationalist Movement, another infamous group, which counted among its agents Guillermo Novo Sampol, recently convicted in the 1976 murders of Chilean exile Orlando Letelier and his assistant, Roni Moffitt.

The Muniz death was one particularly brutal moment in a series of events which effectively began with the Bay of Pigs embarrassment, and which have included random bombings, threatening telephone calls, machine gun slayings and forced "suicides." All these actions were taken by factions of the Cuban exile community who fantasize that through terrorism, they can influence United States foreign policy to maintain the economic blockade of Cuba, enabling them eventually to return to Havana in triumph.

Omega-7 and groups like it feel particularly vindictive, even desperate, because of recent progress in United States-Cuba relations, most specifically because of what the Cubans, here and in Cuba, call "the dialogue." A new policy mutually agreed upon by the Castro Government and the State Department, "the dialogue" steals some thunder from the terrorists, providing for the release of many Cuban political prisoners, the re-unification of families and the free travel to Cuba by permanent Cuban exiles who wish to visit relatives and friends who chose to stay behind after the 1959 revolution. Since the implementation of this policy early in 1979, approximately 12,000 Cuban exiles a month have visited home. And Castro himself is expected here in the fall.

As of this writing, there are no concrete leads in the Muniz case, and no major arrests in any of the acts of terrorism claimed by Omega-7, including the bombing of the Cuban United Nations Mission offices last December. Press coverage of these events has been minimal. Muniz's death, for example, was reported in a two-paragraph item on *The New York Times* obituary page, hardly appropriate placement for what the San Juan police have termed "politically motivated murder."

The official and unofficial silence which surrounds events such as the Muniz shooting is particularly unsettling, not only because it implies that dialogue with Cuba, twenty years after the revolution, is still something to be feared but because it tacitly licenses cowardice and approves murder.

NATURE WATCH

Unsilent Spring

Peepers hibernate among roots and under moss, wood frogs in the punk of stumps or under logs, toads in burrows under rocks and boards. But the spring releases all of them, as everywhere the water flows. Spring *is* water, and the streams turn brown, with duck tracks in the mud, old leaves shining like turtle shells, Leopard and pickerel frogs have hibernated under stones in brooks where the water ran too fast to freeze, but they too head for the pond.

The peepers sing in a monotonous, ringing, fitfully exhilarating call. Inch-sized, with x's on their backs, they seem to be in residence in every country neighborhood for a few weeks. The wood frogs congregate in woodside pools, where they cluck clamorously like chickens falling on top of one another. The spotted leopard frogs converse with a snoring croak or rattle, and pickerel frogs with a sound like cloth ripping, before laying their eggs and heading for the meadowlands again. Native to the pond are the green frogs—which have wintered on the bottom wedged between stones so that they wouldn't float up—and their large, less adventurous look-alikes, the bullfrogs, which simply dig down in the mud. Green frogs croak explosively, but bullfrogs calmly announce, "Be drowned. Better go 'round," as we stand on the bank looking at them.

A bullfrog takes a year to emerge from the tadpole stage, and an extra month to arouse in the spring. But a toad, quicker to metamorphose, wider-ranging, is king of the Batrachians, one might say. With its proverbial sparkling eyes—which, like a magician's, are useful also in spooning down a big mouthful when suddenly retracted into the head—and with its color changes several times a day, its habit of bursting out of and swallowing its skin, the toad is a triumph of versatility. Like a magician, it fights off enemies with secretions of the skin. Turn-of-the-century violinists, indeed, are said to have rubbed thier hands on an obliging toad before a performance because these poisons prevented their fingers from slipping.

Isaac Stern is quoted in a famous dictum: Use the violin to play the music, not the music to play the violin. So we have a spring saying for Mr. Stern and other musicians: Use your toad to play the violin, and not the violin to play your toad.

EDWARD HOAGLAND

Edward Hoagland has two new books being published this fall, African Calliope: A Journey to the Sudan, *and* The Edward Hoagland Reader *(Random House).*

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ARTICLES.

.44-Caliber Journalism

STEPHAN SALISBURY

On August 12, 1977, after a hectic night gathering information from all over Brooklyn, James Mitteager, a former New York City police officer and aspiring journalist, brought a story to *The New York Post*. The story concerned recently captured "Son of Sam" murder suspect David Berkowitz, then incarcerated in a Brooklyn psychiatric prison ward, and Mitteager hoped that it might lead to a job on the paper. Although his story made page 1 that day, *Post* metropolitan editor Peter Michelmore told Mitteager that a staff position was simply not available, but the paper would gladly pay on a freelance basis for any information about Berkowitz that Mitteager could provide.

Because of his subsequent news-gathering efforts, Mitteager now stands charged, by the special New York State anticorruption prosecutor, with four counts of conspiracy and bribery, and faces up to seven years in prison. Mitteager acknowledges freely that he passed a total of $5,800 to Herbert Clarke, one of the corrections officers guarding Berkowitz, for titillating bits of information about the suspect's daily habits. The collaboration was crowned by a photograph of Berkowitz on the front page of the December 5, 1977, *Post* under the headline "SAM SLEEPS." He also admits approaching another guard. In an extremely unusual pretrial hearing, however, the 32-year-old writer is seeking to have the charges dismissed on the ground of "discriminatory prosecution." He claims that he has been singled out for prosecution while higher-ups at *The Post*, who knew that he was doling out money to a public official, condoned it, boosted his fees accordingly and encouraged him to obtain as much "personal information" about Berkowitz as possible—including photographs—have not been charged because of political considerations.

While *Post* executives deny his allegations unequivocally, Mitteager's case is of considerable importance, not the least because it has gone virtually unreported in the daily press. *The Post* and *The Daily News* have not run a single story on the hearings. *The New York Times* has run a few small pieces, all buried—several quite literally on the obituary page. Although editors at *The Post* claim their lack of coverage is based on news judgment (one did say he "assumed it was a policy decision"), few newspapers like to portray themselves in ethically questionable situations, and journalistic ethics are at the heart of the Mitteager story; no one involved in the affair emerges with clean hands.

The facts established at the hearings so far raise serious questions about the news-gathering and editorial processes at one of the largest newspapers in the country. These questions persist even if *Post* editors did not know that part of the considerable sum of money they were paying Mitteager—a total of $16,080 over a four-month period—ended up in a corrections officer's pocket.

The obvious ethical problems of checkbook journalism in the case have tended to overshadow its First Amendment implications. The Special Prosecutor's office began its investigation because authorities were embarrassed by the flood of information making its way from inside the closely guarded hospital onto the front pages. The source of much of that information, guard Herbert Clarke, has been granted immunity from prosecution and is expected to testify against Mitteager. At a time of increased state intrusion into the journalistic process, freelance writers, whose existence is precarious enough, are troubled by the prospect of being isolated from—or abandoned by—their publications, and prosecuted for their news-gathering activities.

This problem has arisen occasionally in the past, most often in libel cases, but now, with the spread of video display terminal units and other forms of computer hardware throughout the industry, newspapers are reducing their full-time employees and increasingly turning to nonstaff writers. The question of Mitt-

DRAWINGS BY JAN SAWKA

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eager's methods aside, the recent *Herbert* v. *Lando* decision opens up new areas in the journalistic process to judicial inquiry. A successful prosecution of Mitteager could have a seriously chilling effect by making freelance contributors even more vulnerable.

Mitteager received $80 for his first *Post* story. He met Clarke while working on the piece and the two were soon in daily contact. On September 14, *The Post* issued Mitteager a check for $7,000. Michelmore testified that this was for "anything" about Berkowitz, particularly his cell activities. It was about this time, according to Michelmore, that Mitteager "came into *The Post* city room and said he could get a picture of Berkowitz in his cell." Mitteager claims that the photograph was Michelmore's idea: "Michelmore asked me if I thought my source could get a picture of David Berkowitz in his cell." Mitteager was concerned about ethical considerations and possible repercussions.

In any event, a camera was borrowed and taken to Clarke who said it was too big for clandestine use. Then, on October 19, a small Minox "spy" camera was purchased with *Post* money by *Post* photo editor Susan Welchman, who testified she did so at the request of *Post* newsman Steve Dunleavy, who was working with Mitteager on aspects of the Berkowitz story. Welchman gave the camera to Mitteager in *The Post* city room, even though she had no idea who he was. The camera was packed with film from *Post* supply, and photographs were snapped surreptitiously by Clarke.

Mitteager testified that two sets of pictures were taken. He brought the first set of black-and-white prints to Michelmore, who said they were worth "only a few thousand." Mitteager claims that *Post* executive editor Roger Wood told him subsequently that if he made another attempt with color film, *The Post* would buy world rights and the photos would be worth a great deal of money. The second batch of color film was developed at the photo lab used by the *National Star* (another publication owned by *Post* editor in chief and publisher Rupert Murdoch, which uses color extensively). In the end, Mitteager was paid $5,000 for his "coup," although he said he was led to believe he would receive "a pretty penny," and sought $25,000.

Michelmore testified that he "didn't know why" Mitteager used color film, adding, however, that Wood, a former editor of *The Star*, had consulted with editors at that paper in the hope that they would want the pictures and thereby help defray the costs. At precisely what point in the negotiations *The Star* became involved remains unclear, but apparently after seeing the photographs, *Star* editors rejected them. Eventually, Mitteager sold additional picture rights to the Associated Press for $3,000.

As for the bribes paid to the hospital guard, Michelmore insisted at the hearings that he "didn't know" the identity of Mitteager's Brooklyn contact, that he "didn't inquire how the pictures would be taken" and that he "did not speculate" about whether the money paid to Mitteager would be used to pay another person. In an earlier deposition, he did say that his "assumption was that the pictures would be taken discreetly." Furthermore, while he verified some of the information passed along by Mitteager, Michelmore said that he made no such effort for much of the "personal information," and he took "no steps to verify the authenticity" of the photographs. He added that he never discussed the legality of the picture-taking operation with Welchman. For her part, Welchman testified that "there are a lot of illegal pictures taken and put in the papers." It did not bother her at the time.

Mitteager claims that the first time he met Michelmore in August 1977, he told the editor that his source was a guard. He said he did so specifically "to build credibility." But, said Mitteager, Clarke had asked him right off: "What's in it for me?" Mitteager testified that he worried about the ethics of "buying information" and early on asked Michelmore to check with *Post* attorneys. He said that Michelmore told him later he had talked with the lawyers, and they had said the payments "were not a problem, but to protect my source they would just pay me." (*Post* attorney Howard Squadron preferred not to comment on the matter.)

Michelmore flatly denies knowing anything about the identity of the source or the nature of the payments. Mitteager claims as well that on two occasions his payments were directly authorized by Rupert Murdoch. Murdoch testified that given the magnitude of his business dealings he did not recall any such authorizations of "small" editorial expenditures.

The hearing has been recessed now until late May because of the disappearance of Clarke, who had been under the wing of the Special Prosecutor. *Post* newsmen have not been at all eager to testify either. Both Wood and Dunleavy left on vacation the week subpoenas were issued for their appearance. They have since returned, but refuse to say whether they will appear voluntarily. Murdoch testified only after Brooklyn State Supreme Court Judge Ernst Rosenberger warned him over the telephone. All *Post* personnel connected with the case now say the same thing: "It would not be appropriate to comment."

The investigation was mounted "because of the leak situation" at the Brooklyn hospital, according to Executive Assistant Special Prosecutor Carl Bornstein. But the strong circumstantial evidence of editorial encouragement by *The Post* of Mitteager's newsgathering efforts would seem to warrant a wider probe. Yet Mitteager, who was indicted in February 1978, is the only person charged. In fact, the grand jury did not begin investigating the *Post*'s possible culpability until the following August, according to sources close to the case, and did so only after Mitteager's Legal Aid attorney, Felix Gilroy, filed the unusual discriminatory prosecution motion and Judge Rosenberger agreed to hear it.

On the stand, Bornstein said that the Special Prosecutor's office had "specific denials" from *Post* offi-

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cials that "they knew money [they were paying Mitteager] was going to a public official." Said Bornstein: "We didn't feel we could overcome those denials. We concluded at that time that we had no one else we could legally proceed against." They did not call in Michelmore, Dunleavy, Welchman or Mitteager until after the grand jury handed down its indictment.

To put the case in perspective, it should be remembered that Murdoch had just bought *The Post* the previous January. The Son of Sam killings were breaking and a circulation war was building between *The Post* and *The Daily News*. The day Berkowitz was captured, *The Post* sold a million copies (normal sales were a bit over half as much), representing gross sales of $2.5 million. How to hold on to those extra readers? Michelmore testified that "normally" the paper didn't pay for information, but the Berkowitz story was "so hot that we did pay at times." (Indeed, the paper went so far as to pay one freelancer $1,000 for *not* publishing his story.) In other words, Berkowitz was good business; "small" editorial expenditures produced very large returns.

Competition between *The News* and *The Post* quickly deteriorated into a battle of bad taste. News judgments were based on considerations more commonly associated with the prime-time television ratings game. Michelmore testified, for example, that *The Post* paid Mitteager $5,000 for transcripts of Berkowitz's responses to questions smuggled to him by Clarke because the paper needed something "to counter" *News* columnist Jimmy Breslin's coverage of the story. Given this kind of thinking, at the very best, news dissolves into digestible irrelevancy.

Editors at *The Post* were clearly careless about whom they were getting information from, how that information was obtained, and whether the information they were publishing was accurate or had any value outside of boosting circulation by reader titillation. Even if they didn't know Mitteager's source was a guard, the propriety of paying large amounts of money for information that originated inside a hospital ward guarded by public officials is dubious on its face. And this list does not even touch upon the problems of sensational publicity—manufactured by the newspaper itself—perhaps inspiring further crimes, the complete trampling of Berkowitz's rights of privacy and the paper's cavalier approach to his Sixth Amendment right to a fair trial (although *The Post* was not alone in ignoring such constitutional niceties).

Obviously, Mitteager is guilty of serious ethical misconduct. But should he alone be prosecuted? Should Clarke be granted immunity? Moreover, it was *The Post* and most of the rest of the media that created the supercharged atmosphere that encouraged such journalistic license.

As far as the charge of discriminatory prosecution is concerned, court observers have termed the investigation by the Special Prosecutor everything from "bumbling" to "strange." Whether it was discriminatory, however, is difficult to prove. What can be said is that Berkowitz was the prize in a newspaper fight and Mitteager was a tool to get at Berkowitz. Money was spread around lavishly. Ironically, according to Welchman, at the time the photograph of Berkowitz appeared, "everyone [at *The Post*] wanted to take credit for it" because they considered it such a "journalistic coup." Now the indicted Mitteager stands alone. No First Amendment issue has been raised in the case. The paper uses even more freelancers today than it did in 1977. They are nervous; they could be dispatched on a more worthy journalistic quest than Mitteager was and then, like him, be disowned at the first sign of trouble. Their motivation to pursue more difficult stories will surely be diminished by the prospect. □

THE BRITISH ELECTIONS

Reactionary Cheek

CHRISTOPHER HITCHENS

London

Evelyn Waugh used to say that he would never vote for the Conservative Party because it had failed to put the clock back by even one minute. The stance of the new Tory leadership would do a great deal to cheer him up. At first sight, it must look as if the United Kingdom has been overtaken by a carnival of reaction. Not only did the Conservatives mobilize the "have" vote to an unprecedented degree, producing the greatest electoral swing since 1945; they did so on an unambiguous appeal to hatred of trade unions, dislike of colored immigrants and opposition to any form of self-government for Scotland, Wales or Ireland. Despite this resurgence of neo-conservative feeling, there was still room for Britain's nuisance-value neo-Nazi party to increase its share of the vote by two points. In Northern Ireland, several seats passed from official ultra-right Unionists to extreme Paisleyite bigots. In Labor seats the swing was hardest against those identified with the left of the party. In Scotland and Wales the nationalist movements were all but wiped out. And incidentally, in case there should be any sneaking feeling that at least there is a triumph for women in all this, the number of ladies in Parliament was reduced to its lowest point in twenty years. (Mrs. Margaret Thatcher, it ought to be remembered, once dismissed the women's liberation movement by say-

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ing "What has it done for me?") Edmund Wilson would not have had to alter his description, in 1945, of basic English qualities: "The passion for social privilege, the rapacious appetite for property, the egoism that damns one's neighbor, the dependence on inherited advantages and the almost equally deep-fibred instinct, often not deliberate or conscious, to make all these appear forms of virtue."

The ideological tone of the Tory campaign was much clearer than ever before. Two weeks before election day, Mrs. Thatcher and her team hosted a party in London at which the star guest was Milton Friedman. That old free-enterprise warhorse Friedrich Von Hayek is on the letterhead of every new Conservative "research foundation." Reactionary chic is the order of the day among a large slice of our intellectuals—many of them former Labor supporters who now stump the country proclaiming their Damascene conversion. Mrs. Thatcher combines her attachment—which is dubiously learned—to this kind of outlook with a fierce appeal to traditional Toryism as well. Every speech stressed the virtues of family life, the need to restore capital punishment, the urgency of "making Britain great again" and the undesirability of having too many Commonwealth immigrants. She is anxious to register this election not just as a routine defeat at the polls for an incumbent Labor Party but as a national repudiation of "socialism" (insofar as the Labor Party can be represented as standing for it).

But closer examination, though it cannot obscure the extent of the left's defeat, can reveal some considerable flaws and fissures in the Conservative position. To start with, Mrs. Thatcher was elected leader on the votes of the lower-middle-class element in her party—the Poujade types who really do believe that our empire was stolen from us and that taxation is the first step to tyranny. But since, to be charitable about it, this group has produced little in the way of political talent, she has had to form her Cabinet from the same old gaggle of bankers, farmers, peers and former officials who served Macmillan, Douglas-Home and Heath. Only in the most junior posts do the marketing consultants and management advisers get a look in. This means that Labor was wrong to say in the election that the Tory leadership had no experience of government (a Conservative appeal in any case). The present Cabinet is composed of men whose incompetence has been tried and tested many times.

The fact is that a British Government is not really master in its own house any more. The International Monetary Fund holds the purse strings, and the European Common Market determines a great deal of policy on tariffs and investment. Our foreign policy was long ago left to the United States to control, and our defense posture and commitments follow the same pattern—though the Conservative Party has always been the least enthusiastic about this. Within the country itself, there is a pervasive core of professional, permanent civil servants who enjoy a level of power and a degree of immunity to outside scrutiny that is unrivaled in the Western world. And the trade unions combine with big management to insure that no "boat-rocking" policy has a chance in industry.

Although the major firms pay the Tory party's bills, they are not enamored in the least of Milton Friedman's unsettling, anti-Government nostrums, and propose to continue the process of operating a corporate state. Having seen how this tremendous guile has combined in the past to frustrate radical change from Labor administrations, one can imagine it having very little trouble in bringing Mrs. Thatcher to heel. The first major bankruptcy in industry will see her Government priming the pumps just as Edward Heath was compelled to do when Rolls-Royce went broke. Malign neglect may enthuse the Babbitts of the Tory rank and file when applied to welfare and minorities, but it leaves the board rooms cold.

Much the same is true of foreign policy. Mrs. Thatcher and her supporters have always been instinctively on the side of Ian Smith's settler rebellion. Their manifesto proposes to "return Rhodesia to legality" and lift sanctions. If they try it, the following things will happen. Nigeria will unload its balance of sterling, which it holds for the Bank of England, and destabilize the pound. The Commonwealth will dissolve. The "special relationship" with Washington will undergo a turn for the worse. So will Britain's connections with the Organization of African Unity. Quite a high price to pay for making friends with South Africa and appeasing the racist vote. I doubt very much that the British establishment is prepared to pay it—and Mrs. Thatcher's appointment of Lord Carrington as Foreign Minister suggests that she realizes as much.

The Tories will probably succeed in marginal redistribution of income from the poor to the rich—but in doing so they will be inheriting Labor's orthodox policies. The tragedy of this election has been that Labor abandoned its own supporters to an unprecedented extent. Analysis of the vote shows huge defection or abstention on the part of skilled working-class electors, who had been badly squeezed by Labor's inept incomes policy. On a whole range of issues from social spending to civil liberty, the Callaghan Government held the door open for the Conservatives and received the plaudits of the City of London and the I.M.F. In Northern Ireland, they continued the policy of underwriting the Unionist position with the British Army, and even gave the Unionists extra seats in return for a short-run voting pact in Parliament. (It was, in fact, pro-Labor Irish nationalist M.P.s who voted to bring this Government down and call an election.) Elsewhere, as in the crucial area of unemployment, Labor was an echo rather than a choice.

I wrote all this a week before the election, and have only had to change two words since. Such is the dreary predictability of British affairs. Perhaps fortunately, Britain's problems are not a model for those

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of other nations. But one moral may have currency beyond our shores. In modern society there is not room in politics for two conservative parties. Labor's appeal to the conservative instincts of the British was not even pragmatically a good idea. Reform parties cannot afford to abandon their principles in office—it won't save them to try. In the last analysis, shamefaced pseudo-conservatism always gets shoved aside to make room for the real thing. □

CABLE TV

Mining the Golden Spectrum

DESMOND SMITH

At one end of the electromagnetic spectrum lies 60-cycle-per-second electricity; at the other, X and gamma rays. In the middle of the spectrum is the television band, a band of pure gold that for more than thirty years has been mined almost exclusively by three commercial TV networks and their 600 affiliated stations. Protected by Congress, the courts and a pliant Federal Communications Commission, the private broadcasters have taken in prodigious profits from their license to sell time on the public airwaves. In 1979, ABC, CBS and NBC will earn an estimated $4 billion from advertising revenues. But the seam of gold is running out, a victim of massive technological change.

To accommodate this change the Communications Act of 1934, which has regulated broadcasting without any revision for forty-five years, is being redrafted. Yet most of the discussion thus far has taken place behind closed doors with little or no public participation. This is a national scandal because what is at stake here is nothing less than a total reordering of the public airwaves. A great deal of the blame for citizen ignorance can be placed on a lazy, willful and downright inept press which so far has covered the story strictly in terms of its science-fiction possibilities.

Technology is the key. In the coming age of Viewer Lib—so the scenario runs—you will no longer be a prisoner of what ABC, CBS or NBC wish to program. You are the television programmer. The marriage of computers with communications satellites and fiber optic cable has the capability to provide every TV home in America with a choice among hundreds of channels. You'll have Raquel Welch specials, first-run movies, big league sports—all commercial-free. There will be such options as porno movies, avant-garde video art, pushbutton shopping, symphony concerts, facsimile newspapers, opinion polling, adult education, burglar protection and—via satellite—an evening with your in-laws in Milwaukee (or Cracow for that matter). When you think about it for a moment—and that's all you are supposed to take—most of these ideas are really new ways of doing old things. The point I want to emphasize here is that you are not supposed to have second thoughts, you are supposed to be impressed. The tidal wave of media hype that is engulfing us artfully puts the spotlight on the *promise* of the emerging new technology while deliberately keeping the social and economic implications in deep shadow. If we remove the rose-colored glasses for a moment we can see more clearly what is now happening in television.

There are 73 million TV homes in America, the vast majority of them receiving their TV picture from a rooftop aerial. For more than three decades Congressmen have put in their "nuisance" files

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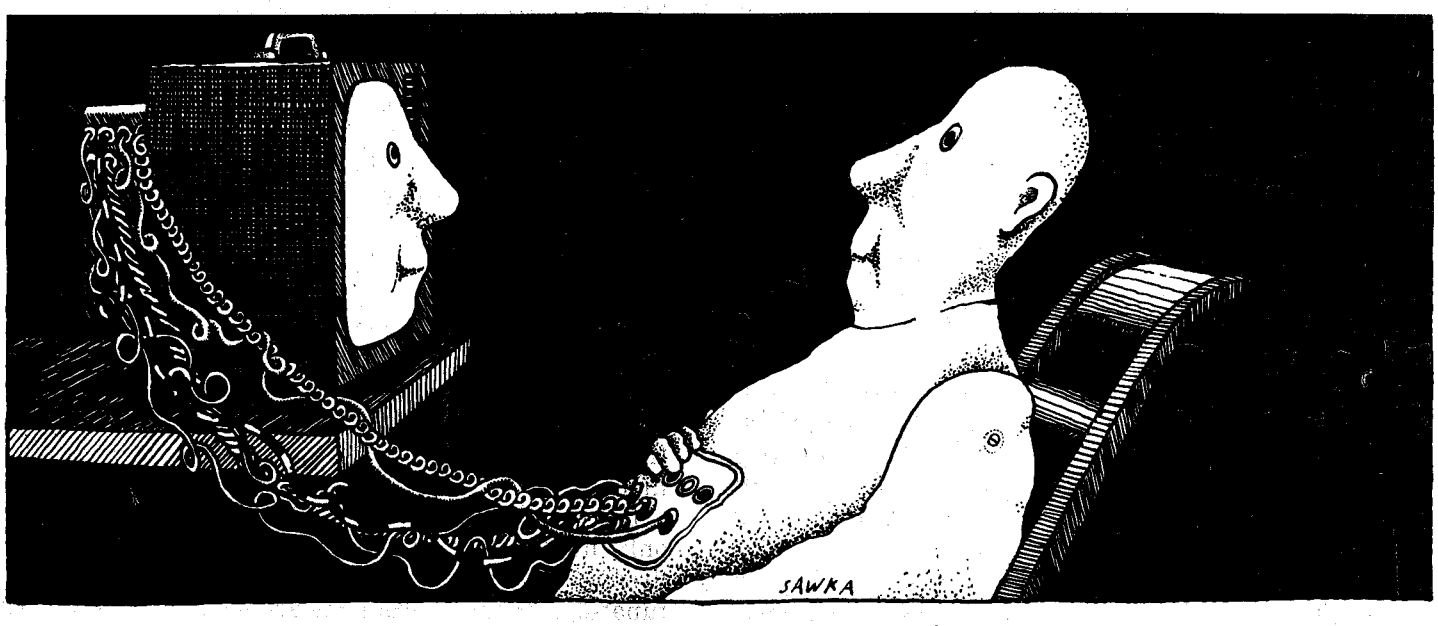

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hundreds of letters from constituents who have been riled over "poor TV reception." More than 22 million households have substandard reception. More than 1 million have no TV service at all. Every home with a rooftop antenna is limited to the single channel service provided by its local TV stations and the networks with which they are linked. It is this domination of the national airwaves that provides the big networks with the vast audiences that they use as the basis of their stupendous advertising rates. Until now the individual viewer's market power has been intrinsically nil. As an individual he could cease viewing, and there would be no effect on the networks.

His complaints of poor service have likewise been ignored. The Congressman invariably refers his letter to the Federal Communications Commission. In time the complainant would receive a form letter explaining that the local TV station had an adequate transmission tower, but that he or she just might be beyond the fringe of its TV signal.

Now all this is changing, and at a tremendous clip. The first part of the reason: cable. The old mode of delivering a TV picture via a transmission tower owned by a local station is being phased out; cable TV is being phased in. Cable offers a viewer a choice of dozens of channels. If a subscriber doesn't want what ABC, CBS or NBC have chosen, he still gets everything else.

For years, cable programming had been restricted. In 1971 the F.C.C. said its approach to cable had two purposes. The first was "to minimize the possibility of adverse impact on the existing broadcast structure" (translation: don't rock the boat). The second purpose was "to spur the development of the variety of *nonbroadcast* services that represent the long-term promise of cable" (translation: provide services that don't compete with broadcasting). The cable operators fought this decision in the courts and won. In decision after decision, the courts have struck down the major restrictions the Federal Communications Commission had placed on cable TV. Recently, the F.C.C. further capitulated, proposing to rescind its rules that limit the importing of programs from one city to another via satellite and prevent local cable stations from showing programs that the regular commercial stations carry. To make matters worse for the broadcasters, Congress has substantially rewritten the Communications Act of 1934. The new act, if passed, proposes to deregulate the cable industry at the Federal level entirely, a move heartily endorsed by the new F.C.C. chairman, Charles D. Ferris. Not since the days of Newton Minow in the early 1960s has an F.C.C. chairman so upset broadcasting's establishment. Preaching the gospel of "unfettered competition" Ferris argues in favor of a free market in the public airwaves. The F.C.C.'s shifting position on the broadcasting medium it regulates is clearly another part of the big change.

A third aspect of change is pay TV. Riding on the back of cable's new momentum, pay television is surging ahead. From a scant 16,000 subscribers in 1973, the total audience has jumped to nearly 3 million viewers who spend an average of $10 a month for the special channel. The major attraction is newly released movies uninterrupted by commercials. Other attractions include sporting events, Las Vegas-style entertainment and blue movies (marked "Porno B" on the selector box). As this audience expands, pay television will strip network TV of its heavy-spending 16- to 34-year-olds and its "upscale" viewers—those who have the potential to buy the automobiles and big-ticket durables now heavily promoted on commercial TV. Moreover, with cable, it is easy to identify these viewers. Unlike conventional TV, advanced cable systems provide viewers with small computer terminals. Every six seconds a computer sweeps the system, recording precisely what channel each set is tuned to. A cable system such as that operated by Warner Communications in Columbus, Ohio, has the capability of identifying who views what with pinpoint precision.

With 20 percent of the American audience now on the cable and satellite distribution of programs a reality, the number of mini-networks is bound to increase. An example of things to come is Ted Turner's self-styled "superstation," WTCG, Atlanta. WTCG's signal is bounced off a space satellite to cable TV systems in forty-three states; these systems feed programs to more than 3.4 million homes from Alaska to Florida, from Connecticut to Hawaii. WTCG's game is to grab the national audience from the networks, offering advertisers a national rate 30 percent lower than those of the networks in terms of cost per thousand viewers. There is nothing super about the programming however—basketball, baseball (Turner owns the Atlanta Braves), old movies and reruns of *I Love Lucy* are the heart of WTCG's program schedule.

We have entered a period of tremendous technical change in communications, and television is at the heart of this change. There is only one issue, and it is not the promise of the future. It is whether the public interest can be better served by deregulation in favor of "free market" forces. If, as the Supreme Court has recognized, the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse . . . sources is essential to the welfare of the public," then it must be a grave error to suggest, as F.C.C. Chairman Ferris has done, that "unfettered competition" ought to prevail in broadcasting.

Lenin said that if you want to see your way through a difficult problem you should ask who is doing what to whom. It is a test that should be applied to the public airwaves. In the past forty-five years only one tiny clause in the Communications Act of 1934 has blocked the total takeover of our airwaves by the hucksters. That clause demands that, in exchange for the license to broadcast, the licensee serve the "public interest, convenience and necessity."

One consequence has been the rise of TV network news and all that it embraces, from election coverage

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to conventions, from documentaries to daily news broadcasts. From the beginning, the networks have accepted the responsibility to inform as well as entertain and they have done a remarkable job. Today TV has become the public's primary source of news, and for the 25 million functional illiterates (according to the Office of Education) in this country, the *only* source of news. So the question must be asked: what happens to the national news if in the coming era of "unfettered competition" the mass audience is so fragmented that the giant conglomerates that own the networks simply decide to get out of "networking"?

What is not widely appreciated is that the proposed rewrite of the Communications Act of 1934 would abandon the public trustee concept in favor of free-market competition. While the idea of increasing public choice has merit, it is an inadequate trade-off for the total abolition of the public interest regulatory standard. Moreover, the rewritten act proposes to deregulate the cable industry entirely. Given these conditions does anyone *seriously* imagine that cable TV will air the kind of national news service provided by *NBC News* with its twenty-two bureaus and a budget exceeding $100 million annually?

The whole cut, thrust and drive of those now waiting to take over the airwaves is toward selling consumer services—whether high-priced movies, sporting events or supermarket shopping. Massive production and consumption of identical products is the most identifiable aspect of all the new proposals. In sum, a transactional medium, an electronic extension of the marketplace.

Without regulation, the Government will create a system of broadcasting that will quickly favor the "white highlands" of America—a surfeit of services and choice for the middle and upper segments of society, little or nothing for the new media "underclass" (although one entrepreneur has actually suggested "media welfare stamps"). So long as the Carter Administration has no policy to deal with the spectrum, its performance in communications policy is really *Hamlet* without the Prince. Before the National Association of Broadcasters convention in Dallas last month, Carter promised well-to-do broadcasters that, "we want to make certain that the [proposed] legislation is not onerous on you." So far he has yet to broaden that concern to the American people.

What is needed is a national commission on the future of the public airwaves. Such a panel ought to include minority as well as labor union representation —reflecting a huge swath of American society that rarely finds itself in on the setting of policy goals. The panel's findings would form the basis for White House policy which would then be sent to Congress to be discussed and enacted into law. The proceedings would be cumbersome in the extreme, but they would follow the letter and spirit of democracy. There is no compromise possible between those who seek to represent the public interest and those who want to turn the airwaves over to unfettered competition. They are proposing to subordinate communications to commerce. □

RENT CONTROL

A Tenant Revolt

BARBARA KOEPPEL

California tenants who voted for Proposition 13 because Howard Jarvis and the real estate interests promised them a fiscal rose garden have discovered that they were sold some prime underwater land instead. The referendum did indeed lower property taxes, but their rents continue to go up. In one San Francisco luxury building, John Chancellor recently reported on NBC's *Nightly News*, rents were suddenly raised as much as $350 a month. The tenants were organizing, Chancellor intoned—"They're angry." They are not alone.

The seeds of a full-blown tenant movement are sprouting around the country, and its object is rent control—words that send shivers down the spines of landlords from Long Island to Los Angeles.

Not too long ago, any attempts by tenants to interfere in this traditional landlord's domain were regarded as an attack on sacrosanct property rights. And whenever tenant groups mounted threats, the real estate industry prevailed (except in New York City, where controls imposed during World War II have remained in force) as its friends and beneficiaries in state legislatures, city halls and the courts killed proposal after proposal. As a result, fewer than 5 percent of the nation's tenants currently live under rent-control laws.

But as in other sectors of the economy, inflation has hit housing costs, which rose by 10.6 percent between February 1978 and February 1979. The question is, who should bear them? Landlords, citing bloated taxes, labor, fuel and other operating costs, insist they be allowed to pass them along to the tenants, so they can maintain the profit margin they think fair. Tenants, however, are increasingly asking why they must shoulder the burden alone—why landlords shouldn't feel the bite as well. And this places them squarely in conflict with private property rights.

Signs of the struggle emerged as early as 1969, when tenants, mostly on the East Coast, began to challenge the existing order. Because of such pressure, Boston enacted rent controls and was followed by four more Massachusetts municipalities, Washington, D.C., Miami Beach and 120 communities in New Jersey, among others. Now the real battleground has shifted west to California, where it has all but ex-

Barbara Koeppel, a freelance writer based in Baltimore, researched this article in California.

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ploded. The issue was brewing there for several years, but the debate quickened last summer, as tenant groups mushroomed from one end of the state to the other, calling town meetings, storming city halls and lobbying legislators nonstop.

Why the furor? Rents have soared in relation to incomes in most urban areas, particularly in the last few years. In New York, for example, despite long-standing controls, rents have skyrocketed. A two-bedroom apartment on West End Avenue (the Upper West Side), which was $200 in 1970, is now $650. A one-bedroom, first-floor unit on the north end of Greenwich Village, which was $175 in 1971, is now $700.

In California, rents had basically kept pace with cost-of-living hikes until speculators entered the housing market in 1975 and 1976. Buildings were sold and resold, each time at higher prices and rents doubled as the new owners incurred greatly increased mortgage costs. Tenants have just two options: pay or leave. Consider the experience of renters in Santa Barbara, a coastal city in Southern California. Here, the Rent Control Alliance, a local citizens' group formed to advise tenants of their rights, keeps tabs of the raises as renters call for help. One couple told of paying $125 for their two-bedroom unit in 1974. When the building was sold in 1977, the rent jumped to $315. It was sold once more in 1978 and the rent shot to $450. As of this February, they must pay $550. And their case is typical.

At the same time, real buying power is down. As a result, the traditional income allocation of no more than 25 percent for housing is now an anachronism. A 1975 Department of Housing and Urban Development study found that 42 percent of all renters in the United States paid more. In San Francisco, half of the tenants pay at least 25 percent while a third are spending more than 35 percent. The script is the same elsewhere and those hit hardest are in low- and moderate-income groups.

As the cost of homeownership rises to even giddier heights, more and more Americans are becoming permanent renters. That home in the suburbs—now costing $71,000 on the average—is a fast-fading dream. No longer can the renting phase be seen as an unpleasant but necessary step to homeownership; instead, it is for keeps. It is also becoming clear that it is an area over which people have no control—an awareness that comes as something of a shock to middle-income groups raised on the notion of freedom of choice. "The renter is really a second-class citizen," observes David Morrison, former general counsel for the California Department of Housing and Community Development. "But it is only now, as more are locked into the tenant status, that people are becoming aware of this fact. And it clarifies a lot of things we never had to face before."

Proposition 13 only hastened the awakening in California. It slashed property taxes for homeowners and landlords by about 60 percent, and to the large number of Californians who voted it in, it seemed an effective way to cut rising living costs in a stroke. Renters were happily counting their rebate checks in advance, expecting to cash in on the landlords' saving of a whopping $1.2 billion (an average of $300 per apartment).

When the election smoke cleared, however, tenants had little to cheer about. By the state's own calculations, only 12 percent of the landlords, at most, passed along some of their savings. Worse still, countless apartment owners chose the same moment to raise rents—a move they may long regret. Renters were furious and a tenant movement blossomed overnight. By late August, the uproar had become so great that city councils in Los Angeles, Beverly Hills and two other townships were forced to pass stop-gap rent freezes, sending rents back to May levels. In November, voters in Berkeley and Davis passed rent-rebate and rollback initiatives (the first of their kind in the state), although three other cities rejected similar initiatives (very narrowly in San Francisco). Voters in Santa Cruz turned down a rent-control proposal but approved an anti-speculation tax that imposes steep levies on transactions by speculators buying and selling buildings within short periods of time.

Rent-control opponents were quick to point out that the ballot initiatives failed in most cities where they were tested, but proponents countered that where they lost it was not because of voter opposition to controls but because they were outspent. Undoubtedly the industry's intensive public relations campaign, which included full-page advertisements, television spots and mass mailings to every household, had an effect. In San Francisco, the industry spent $500,000 compared to the tenant groups' $11,000. In Santa Barbara, it cost the landlords about $6 a vote. As David Morrison put it: "If you have unlimited funds, you can buy talent and run a very sophisticated propaganda campaign—and win."

The apartment owners aimed their message at builders, construction workers, homeowners and low-income renters, reciting a standard litany of alleged rent-control abuses: Controls lead to a reduction in new construction because investors would be unwilling to sink money into rent-controlled buildings and banks would refuse to grant loans. For the builders, it would be financial ruin; for the workers, mass unemployment. Controls lead to property decline, abandonment, severe housing shortages and higher taxes. The real estate tax base shrinks and, to compensate, middle-class homeowners' taxes go up.

As the industry sees it, the housing problem—shortages, high rents and the like—can be solved rather simply and without controls. "Builders must be allowed to build—what they know how to do best," says Ted Dienstfrey, director of research and planning for the California Housing Council, a statewide association of large apartment owners. Admitting that most new construction is costly and not for the poor- moderate- or even middle-income groups, he

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claims that the "filtering" system will provide for their needs. The idea is that the rich take the new units, and all those beneath them on the income ladder "move up" to the older housing the former have vacated. Critics, however, call it a "trickle down" theory and argue that by the time it trickles down to the lowest group it is substandard, if not dilapidated.

In reply, rent-control advocates pointed to the findings in a recent report on the economic impact of "moderate" rent controls by John Gilderbloom for the California Department of Housing and Community Development. Gilderbloom argues that "you can't generalize about rent control. It's like asking whether cars are good or bad and then answering the question by reporting on the history of the Edsel. The problem is that the debate always focuses on the worst kind, those in New York, while other examples are excluded. And what happened there is not representative of what occurred elsewhere."

Even in New York, the defenders of controls argue that they were not responsible for the infamous blight of the South Bronx. Jane Benedict, chairwoman of the Metropolitan Council on Housing, says that it is simply not true that rents were absolutely frozen in New York between 1947 and 1969, and that landlords, unable to make a profit, abandoned buildings. She points out that under New York's rent-control law "landlords could hike rents by 15 percent when tenants moved out. They could also pass along the costs of new equipment and major improvements. And if they could prove 'hardship'—that their expenses were too high in relation to rents—the Rent Control Board would grant them an increase. If they didn't appeal, then they obviously didn't need to. And since 1972, owners of controlled buildings (those built before 1947) can boost rents by 7.5 percent a year. That's already 68 percent; and by 1980, the rents on these units will have increased by 100 percent."

Tackling the industry's first claim, about reduced levels of construction, Gilderbloom compared the housing experiences of twenty-six rent-controlled New Jersey cities with those in thirty-seven noncontrolled locales and found that moderate controls have "no net effect on new construction of apartment buildings." His data further showed that construction of this sort declined much less in the communities with controls than in noncontrolled towns.

"Builders continue to build regardless, partly because they are acquainted with the economic opportunities in their areas and partly because the rent-control laws guarantee a reasonable return on investment," he notes. In some towns, newly constructed units are excluded from controls altogether, so landlords here are not affected at all. In the same vein, a study by Emily Achtenberg of the Greater Boston Development Corporation shows that construction in Massachusetts increased 54 percent after two years of controls.

Gilderbloom sharply disputes the charge that building maintenance drops with the enactment of controls. Rent-control directors Shirley Green, of Newark, and Sylvia Aranow, of Fort Lee, N.J., told Gilderbloom that the moderate schemes their cities adopted actually stimulate landlords to maintain buildings. Owners are allowed to pass the full cost of repairs and improvements on to the tenants in higher rents and are only permitted to boost rents if their units are free of major violations. If they let services slip, tenants can alert the Rent Control Board and their rent is reduced until the problem is corrected.

Even in New York, the city supposedly "destroyed" by controls, the charge about maintenance rings false. Apartments on Central Park West, for example, were under the same controls as those in the South Bronx and were not allowed to run down. According to Dennis Keating, an urban planner and attorney at Berkeley, Calif., the blight epitomized by the South Bronx has little to do with controls. Rather, it is caused by landlords' "milking" properties in poor neighborhoods—a practice whereby the purchase price of the buildings, which is relatively low in blighted areas, is recouped in a short time period by the owners' failing to make repairs. "They just stop maintenance altogether, don't pay taxes, milk them as long as possible and hope the city will eventually take them," he explains.

The idea that controls lead to wholesale abandonment and demolition has been refuted repeatedly by government and private studies. A recent report by the Women's City Club of New York found that the chief causes of abandonment there are redlining (banks refusing loans for purchase or rehabilitation of buildings in declining areas), vandalism and fail-

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ure of tenants to pay rents. Gilderbloom adds that decay occurs in noncontrolled cities, as well. A National Urban League study of abandonment found that New York ranked fifth behind four nonrent-controlled cities (St. Louis, Cleveland, Chicago and Hoboken, N.J.).

The arguments that properties lose their value, that the tax base shrinks and the tax burden shifts to homeowners also seem hollow, since they are only plausible if the other contentions are valid (that maintenance drops, and the like). One study often used by landlords to support this claim—which shows a declining tax base in Lynn and Somerville, Mass.—fails to note that the drop began two years before the rent controls were enacted. On the other hand, a report by the State Department of Corporations and Taxation notes that controls had "no systematic effect on property values." In New Jersey, the results are similar.

To the industry's charge that banks will refuse to loan to areas with rent control, Achtenberg and Gilderbloom point to a study done for the California Housing Council itself, by Gruen and Gruen of New Jersey, which concluded that "When landlords are allowed to pass along increases, such as higher interest payments, banks continue to lend."

Of course the banks, with their close ties to the real estate industry, could choose to make it a self-fulfilling prophecy. They could agree, for example, to refuse loans to a particular area, even a state, to make a point. But this assumes a coherent, carefully worked out strategy which, until now, has not emerged. If it did, it would be the result of a deliberate attack, not a necessary outcome.

What, in fact, do "moderate," "second-generation" rent controls do? Basically, they attempt to regulate the amount of rent increases, instead of freezing rates at a particular level. They allow owners to boost rents, to compensate for increased costs (based on one formula or another) and often provide for "hardship" hikes. They do not reduce current rents, but they protect tenants in other important ways.

First, they prevent "rent gouging"—landlords getting extraordinary increases. Next, they tend to insure better upkeep of buildings, because of the incentives related to the approval of rent hikes. And finally, where the laws include anti-eviction clauses, they protect tenants from retaliation (by landlords) for complaining about illegal rent hikes, unsafe conditions and the like. "Right now, tenants in California and many other states can be and are evicted for any or no reason," says Morrison. "Without such clauses, rent controls are worthless."

Although the tenant revolt is growing, its future success is difficult to predict. Landlords are fighting back, fiercely defending ancient property rights. In Davis, Calif., where voters passed a rebate and roll-back law, landlords turned to the courts. According to Althea Lee Jordan, an assistant professor at Hastings College of Law in San Francisco and attorney for the tenants in the case, "the landlords are saying the new law interferes with private property and their right to make a profit. Their argument is that any law which lessens the rents set in the leases 'impairs' these contracts and is therefore unconstitutional. But the case has not yet been decided."

In Los Angeles, apartment owners are pushing for vacancy decontrol provisions to be included in any rent-control law, which would allow them to remove the controls when units are vacated. Tenant advocates insist that these undermine rent controls but city council members are under heavy pressure from industry and may acquiesce. Further, the council is discussing schemes that would permit rents to rise at about the rate of inflation. Gilderbloom points out that this level of increase actually nets the landlords far more than their increased costs. He explains that about one half of the owners' monthly expenses are mortgage payments, which are set at the time the building is purchased and therefore not affected by rising prices. Thus, a more reasonable ceiling would be about half the inflation rate. (Gilderbloom himself has experienced the landlords' wrath. He was advised to halt his study several times. "You'll never survive to finish your work," one industry lobbyist warned him. In another instance, a real estate agent wrote to one of the Governor's aides that "We must find a way to neutralize him [Gilderbloom].")

Considerable hope is placed in anti-speculation ordinances of the sort Santa Cruz, Calif., voters approved last November, on the theory that if apartment-building owners are confronted with a steeply graded transfer tax at the time of sale, they, along with the speculators, will be less inclined to deal properties like counters in a Monopoly game. Further, there must be tough enforcement of the anti-eviction laws, which,until now, have been so lax that tenants are routinely evicted, even where such laws exist.

To prevent wholesale redlining, the lending policies of the banks and savings and loans institutions should be carefully monitored, statewide. Unions might begin to invest their pension funds in construction and rehabilitation projects, providing financing to those who will build low- and moderate-income housing. And lastly, if economic conditions worsen dramatically, and mandatory wage and price controls are imposed, there must be equally strict regulation of rents (of the sort adopted in World Wars I and II).

Just now, the California contest sharpens as the tenant movement swells with a momentum that amazes even its organizers. Because of grass-roots pressure in Santa Monica, voters approved a rent-control measure last month that freezes rents for 190 days and then rolls them back to April 1978 levels. The proposal also set up a board to approve rent increases and condominium conversions. Most important, the measure that passed is almost identical to one that was defeated just ten months ago. It is likely that what happens in this state, which turned the country on to hoola hoops, skateboards, casual dress and taxpayers' revolt, will spread to the rest of the country. □

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NATO at 30

NORMAN BIRNBAUM

We have received a letter from the Assistant Secretary of State for Public Affairs calling our attention to the thirtieth anniversary of NATO. State, believe it or not, actually suggested that we were not now in a position of grave military inferiority in Europe to the Soviet Union, that in any event not all problems are military, and asked us, in the spirit of the anniversary, to reflect on how the alliance might be strengthened. Herewith, then, some reflections:

Much has changed since 1949. Stalin is gone, even if the sclerotic hacks who now direct the Soviet Union grew up in his shadow. World Communism has fragmented, so much so that some regard China as a de facto member of NATO. The most Stalinist of East European states, Rumania, has a foreign policy almost as independent as that of Yugoslavia. The two halves of Europe, meanwhile, have come closer together. The Warsaw Pact nations suffer from an absence of civil liberties and political freedom, from the lack of authentic socialism, but in some (Hungary and Poland in particular) conditions have obviously improved. This has been due not to the threat of intervention from the West but to the obdurate resistance of their own peoples—and to reasonable Western policies which have honored such small steps as more flexible Communist regimes have taken. Western Europe, meanwhile, is not threatened by that combination of internal Communist disruption and external force which used to menace it.

NATO, then, has done more than dampen the adventurism of the Soviet hawks; it has provided a military shield which has enabled the Western democracies to influence Eastern Europe and the Soviet Union itself—an influence most palpable when military tension has been minimal rather than maximal. Are there ways in which NATO can be converted into an even more effective instrument for the gradual transformation of Europe? We think so, but first some major illusions have to be dispensed with.

The State Department depicted NATO's strategic doctrine as follows: "Keystone of the strategy is that an aggressor must be convinced of NATO's readiness to use nuclear weapons if necessary, yet he must be uncertain as to the timing of the circumstances." The uncertainty must weigh as heavily upon West Europe's population (and the population of the two Germanys) as it does upon the Soviet General Staff. The supposition that a command structure will function perfectly during the disorder of a crisis is entirely gratuitous. Technical failures in communication and control systems are likely. The occasions for local military initiatives with irreversible consequences are too many. There are 7,000 nuclear weapons in Western Europe, nearly all of them American.

That an American Government might well risk the destruction of Western Europe to save it, and of Eastern Europe to liberate it (after Vietnam and Kampuchea), is a prospect the Europeans fear—with good reason. NATO is a singular exemplar of the fatality of contemporary strategy. It is a military force which, if used, is likely to negate the reasons for its existence. NATO can guarantee Western Europe's security, and the possibility of further evolution in Eastern Europe, only if it is incorporated into a European security arrangement.

The place to pursue an arrangement is Vienna, site of the interminable Mutual Balanced Force Reduction talks between NATO and the Warsaw Pact nations. The talks, however, have not been coupled with the SALT II negotiations by the superpowers. Indeed, they have been allowed to disappear—for all practical purposes—from public view in our country. The Europeans are troubled because SALT II may allow the superpowers to assume tacitly that they can limit a nuclear conflict to Europe. Specifically, they are worried because the present SALT II draft would leave the Soviet Union with missiles that could strike European targets, while leaving the Europeans without retaliatory land-based missiles. That would increase their dependence upon the United States and not decrease the threat from the East. It was just this circumstance that induced Charles de Gaulle to develop an independent French nuclear force. When de Gaulle said that all of Europe was or would become Gaullist, he knew whereof he spoke.

The German Federal Republic has recently provided ample confirmation of the General's prophecy. The new German Defense Minister, Hans Apel, has insisted that Governments instruct the alliance—not the other way around. The other day, John Vinocur of *The New York Times* reported from Bonn that it was disturbing that Helmut Schmidt had not repudiated the view, increasingly heard in West Germany, that the Soviet Union did not have offensive intentions in Western Europe. The denial of Soviet offensive intentions came, most recently, from a German armored division commander—whose dismissal was promptly demanded by the German opposition, and as promptly refused by the Government. Germany's geopolitical position, and the special responsibility assumed by the Social Democrats for the preservation of the national legacy in the Democratic Republic, have now combined with the Federal Republic's economic and military strength to render German policy more autonomous. Those who deplore the situation seemed far less concerned when the German right seemed ready for military confrontation in central Europe.

They are, of course, talking nonsense. Germany is not an Atlantic nation but a central European one, and by tradition and inclination, its Governments will act accordingly. For us, there are positive aspects to

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the prospect of German autonomy. The reduction of force levels in central Europe, a relaxation of Soviet control in its East German satellite state, might relieve us of the burden of maintaining so many troops in Europe. Of course, our higher strategic thinkers will be tempted to regress to one of NATO's original ends, to restrain the West Germans from becoming autonomous. For those who cannot imagine the world as other than it is, the future must indeed appear perilous. For the rest of us, the Europeanization of NATO is now a distinct possibility.

Yet now the State Department suggests that NATO has to confront global problems. The egregious Gen. Alexander Haig, who from Brussels seems unable to distinguish between Sicily and Africa, has placed a very peculiar interpretation upon this notion. In fact, neither in Africa nor in the Middle East do the NATO nations make common cause with us. As for wider economic and political relations, these are the concern of the European Economic Community, whose interests are not identical with those of American capitalism.

The State Department would do well not to raise expectations as pious as they are unrealistic. NATO has enough concrete military problems to solve. The Germans have said that they will agree to the stationing of middle-range missiles, if at least one other NATO member agrees to do the same. The European members of NATO, however, are not jostling one another for the honor. Meanwhile, instead of wringing our collective hands about the large numerical superiority of the Warsaw Pact in tank forces, we might think about it. Many of the Warsaw Pact tanks are in the Czech, East German and Polish armies—whose forces may not prove reliable Soviet allies. We could, however, reassess our fundamental military technology. NATO could be reorganized with thousands of very small tank-destroyer units—composed of jeeps and shoulder-mounted missiles. That reorganization would entail a commitment to a fundamentally defensive strategy, which may well account for the loud silence with which our experts greet suggestions of this sort.

In the last analysis, the big questions facing NATO are political. Lest the euphoria of anniversary carry us away, we may remind ourselves that we tolerated the Portuguese fascists and the charlatanlike Greek colonels as NATO allies—for the sake of "anti-Communism." More recently, General Haig has warned the Italians that NATO would not tolerate the participation of the Italian Communists in their Government. (Italy has been pursuing a bipartisan foreign and military policy for years, and the least acquaintance with that situation would suggest that the Communists would be able to change very little, since there is very little to change.) Devotion to democracy in Europe, however, might suggest that the General bestir himself in another respect. Some of the Italian military intelligence agencies involved in fomenting terror were parts of NATO networks, and the Italians can do without them. We do need more serious thought about NATO's future, and in that respect, we hope that the forthcoming change of command and departure of General Haig will entail a change in ideas.

NORMAN BIRNBAUM

Bakke-wards

(Continued From Front Cover)

filling these jobs only with people from outside the plant, and required skills and experience possessed by very few minority workmen. The outside hiring also frustrated many white workers, who wanted an in-plant training program.

In early 1974, Kaiser and the United Steelworkers of America, A.F.L.-C.I.O., negotiated a collective bargaining agreement for fifteen Kaiser plants throughout the country. The agreement created a craft training program patterned on a nationwide steel industry plan approved by the courts. Fifty percent of those selected for the program were to be minority, and the trainees were to be selected on the basis of relative seniority within their racial groups. Kaiser expected the Gramercy program to take about thirty years, until the black proportion of craft employees reached 39 percent.

Brian Weber, white, now 32 and working as a lab technician, joined Kaiser in 1968. He applied in 1974 for one of the nine new craft training slots and was turned down because some thirty-five whites had higher seniority. Low as he was on the white list, Weber still had more seniority than two of the five blacks selected from the minority list, and he felt wronged. He promptly sued both Kaiser and the Steelworkers, charging "reverse discrimination" against all white workers.

The trial lasted only one day, and no blacks or Federal civil rights agencies testified or even participated; Deputy Director Richard Devine of the Office of Contract Compliance has since admitted that "the Government was remiss" in not getting into the trial. Weber won his case, and was upheld on appeal. Kaiser could create a racial quota, ruled the Federal Court of Appeals in New Orleans in a 2-to-1 decision, only if it had discriminated against blacks in the past; not surprisingly, nobody at the brief trial had too much interest in proving that, though some evidence came in. And even then, said the court, Kaiser could grant a preference only to the specific blacks who had themselves been discriminated against in craft hiring. The fact that Kaiser was trying to comply with a Federal executive order requiring affirmative action plans by Government contractors was no defense either. Kaiser, the union and the Government (which finally decided to get involved) applied for and got Supreme Court review.

At one time, the courts seemed to be the civil rights

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movement's best and sometimes only recourse. Recently, the judicial sword has been two-edged. "Reverse discrimination" suits have proliferated, and many have been successful. These suits come at a bad time for blacks.

It is a quarter of a century since *Brown* v. *Board of Education* destroyed the legal foundations of discrimination against blacks. It is fifteen years since the Civil Rights Act of 1964 was passed. Yet the Urban League reported in January that the ratio of black-to-white unemployment worsened more than 20 percent in the last two years. The jobless rate among black adult males is 2.3 times higher than that for whites, the widest the gap has ever been. Black teen-age unemployment is at least 36 percent, as against 13.9 percent for whites; in 1954, the year of the *Brown* decision, the comparable rates were 16.5 and 12.2 percent. Roughly one out of every four black workers is without a full-time job; 28 percent of black families are below the poverty line, compared with 7 percent of white families. And things will get worse as the economy continues to shift to white-collar jobs requiring substantial education and good work habits, which many young blacks don't have. And all this during a period of prosperity.

The statistics tell only part of the grim story. Many white Americans are convinced that, in general, blacks have made it, that substantial equality of opportunity has been achieved and special efforts are unnecessary. Recent polls have consistently found that white Americans think the period for special consideration is over. Now, everyone must compete on an individual colorblind basis, and that is Brian Weber's demand.

And so, at this point in America's unfolding racial drama, on a day in March, the Supreme Court heard the arguments of both sides. Attorneys for Kaiser, the union and the Government came to defend the racial quota, of course, but in such different ways that the Government and Kaiser seemed as hostile to the union as to Weber. Before an overflow audience, some of whom had waited in line for seats since midnight, Noyes Thompson Powers, a tall, distinguished lawyer from one of Washington's major firms, opened for Kaiser. Regardless of whether the company itself had discriminated against blacks—which it denied—Title VII permitted it to adopt a racial quota to remedy educational and other discrimination perpetrated by others, a position that four Justices seem to have accepted in a footnote to last year's *Bakke* case. To require an admission or proof of discrimination, argued Powers, would invite massive litigation by blacks, and "if that is the price of affirmative action, no employer would pay it."

For the union, Michael Gottesman, a Lincoln-bearded, polished veteran of many landmark employment cases, offered a very different defense of the Kaiser plan: Quotas to end racial imbalance may be adopted by the voluntary efforts of private parties like Kaiser and the Steelworkers even if there were no proof of prior discrimination. But *only* by such voluntary efforts. Congress "rejected Government-imposed quotas, in any form," argued the union brief. Even if a court finds discrimination, it can only order that the particular victims be compensated.

Deputy Solicitor General Lawrence Wallace, heavyset, mustached and also an experienced Supreme Court advocate, responded vigorously to both Gottesman's narrow view of governmental power and to the lower courts' rulings. Where there is proof of discrimination, or a Federal contract program, the statute and numerous prior cases, including the courts below, do allow the Government to order racial quotas; absent discrimination, quotas are illegal. But it is self-defeating to require an employer to wait until discrimination is actually proven, or until he is sued. If there is a reasonable basis for believing such quotas are necessary to comply with Title VII or other Government requirements—and Kaiser's racial numbers provided that basis here—an employer may anticipatorily adopt what the Government might impose.

Pressed hard by Justice Potter Stewart, who seemed taken with the union's argument as a way to avoid a decision on whether the Government could order quota relief, Wallace often seemed off balance. The union's position, he argued, would undermine the attack on employment discrimination, because denying enforcement powers to the Government would eliminate the spur to voluntary action, on which the whole system of enforcement was ultimately based. "The Court is being asked to take it on faith that an employer like Kaiser will continue to spend hundreds of thousands of dollars on a program like this [to say nothing of antagonizing its white work force], even if no court could order it to do so." After all, Kaiser hadn't instituted the program until threatened with enforcement.

Weber's 32-year-old lawyer, bearded, bespectacled and wiry Michael Fontham, who was pleading his first Supreme Court case, attacked the Kaiser plan vigorously. Fontham insisted—correctly—that antidiscrimination laws protect whites as well as blacks and charged that Weber was subjected to racial discrimination when his seniority rights were ignored solely because he was white. Moreoever, the plan could not be justified as a remedy for other societal or specific discrimination because the only lawful race-conscious remedy is for an *individual* who shows that he or she was actually discriminated against. Title VII and its constitutional underpinnings are not group-oriented but individual and personal.

It is hard not to find the white worker's arguments appealing, at least initially. Brian Weber is not a rich man, and he has to support a family as much as any black worker. A craft job would be a significant step upward in money, status and working conditions. And Weber certainly hasn't discriminated against blacks. As he told Steven Roberts of *The New York Times*, "If I do anything wrong, I should be made to pay for what I do, but not for what someone did 150 years ago." In his eyes, Kaiser is trying to make work-

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ing people like himself bear the entire burden of its efforts to avoid discrimination suits by blacks or debarment from Government contracts.

Weber's arguments also raise some quite fundamental questions. Should today's white Americans have to pay for their ancestors' sins? Which Americans? How much? Isn't group thinking dangerous? Wasn't this country founded on individual, not group rights?

Happily or otherwise, not many of these questions are likely to be answered by the *Weber* case. For in truth, it is one of the easier cases of its kind. Unlike other quota cases involving access to pre-existing benefits or positions, the Kaiser plan didn't cause Weber to lose anything he reasonably expected to get before the plan was adopted.

Before Kaiser adopted its training program, Kaiser's white employees had almost no chance to become craft workers. The plan created for them a brand-new opportunity. The plan is thus almost a model remedy—everybody wins, nobody loses. The fact that whites didn't get as good an opportunity as a racially neutral seniority system would have given them doesn't change the fact that under the plan they gained something new and lost nothing old. Nor is seniority that sacred. Though it is a necessary barrier against arbitrary assignments, layoffs and the like, the law allows employers and unions to alter seniority voluntarily and to enhance blacks' seniority status at the expense of whites, if it is done to promote a strong public policy interest.

Furthermore, we have never given more than lip service to truly neutral selection procedures like seniority or merit. Colleges have looked to geographic diversity, athletic ability, extracurricular activities, alumni and other connections and many other subjective and varying factors in admitting students; unions have given members' relatives preference, and private employers give veterans preference.

All of this is not to deny some unfairness in making Brian Weber and other nonaffluent whites pay for the past discrimination. But there really are very few ways to redress past discrimination against blacks without adversely affecting some whites—and Weber, incidentally, has attacked one of these few ways. Even if the Court adopted Weber's argument that only blacks who were individually discriminated against can get relief, some whites would be adversely affected. Suppose a black shows that Kaiser discriminatorily denied him a craft job, and a court orders that he be given the next available opening. Although Kaiser had discriminated, the victim of the remedy would still be some white worker who would otherwise have gotten that next opening. Obviously, a long-term quota involves more slots, but not really that many: over a thirty-year period, the number of blacks at Gramercy was to rise to 116, or between three and four per year.

If the Kaiser plan is struck down, the job future for blacks, other minorities and women will be bleak indeed, and particularly in the craft unions. The General Accounting Office, Congress's investigative arm, reported last month that resistance on the part of the craft unions, nepotism and inadequate enforcement by civil rights agencies have prevented minorities from noticeably improving their access to skilled construction jobs. The impact of Weber's suit on Kaiser itself is a clear example of what may happen: when Weber won in the lower court, Kaiser had to drop the black quota, and in 1975 only one black was admitted to the training program. Other companies have told the Steelworkers that the *Weber* decision has made them either drop their affirmative action plans or consider doing so.

The consequences for the Federal enforcement effort would be equally devastating. That effort depends heavily on voluntary affirmative action, and what employer will adopt such a plan if to do so would invite suits by white workers? And the same goes for minority recruitment and training programs. The Federal contract compliance program would be crippled, and the enforcement agencies would be forced to litigate each of a multitude of cases to the bitter end. Even then, the only blacks to gain relief would be the relative handful who could show individual discrimination by a particular employer or union.

Fortunately, a total repudiation of the Kaiser plan seems unlikely. Some recent Court rulings have not been sympathetic to minorities and women, but the *Bakke* opinions reveal four votes for voluntary affirmative action: William Brennan, Byron White, Thurgood Marshall and Harry Blackmun. Justice John Paul Stevens has disqualified himself for reasons unknown. So if Justice Lewis Powell, who missed the argument, participates and votes for Weber, the worst possibility is a 4-to-4 tie, deferring the issue; if Powell doesn't participate, a 4-to-3 vote upholding the Kaiser plan is likely.

Another possibility is a ruling favorable to the plan that either focuses narrowly on the specifics of the *Kaiser* case or upholds it but without a majority for any particular viewpoint, a *Bakke*-type decision. Either result would produce a great deal of uncertainty and much more litigation.

The Kaiser program presents the best case for affirmative action. It was designed to remedy indisputably severe discrimination, it hurt no one and it distributed benefits fairly and rationally. In its first and only year of operation, Kaiser still hired only 23 percent blacks because it also brought in twenty-two craftsmen from outside the plant, twenty-one of whom were white. The plan also was a result of a voluntary collective bargaining agreement under which the union effectively represented and gained benefits for all its members, black and white.

If Kaiser's plan loses, affirmative action is dead. We will then have to resign ourselves to much more litigation, even more overcrowded courtrooms and, ultimately, to a massive slowdown in the effort to eliminate what the Supreme Court has called "the last vestiges of an unfortunate and ignominious page in the country's history." □

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BOOKS & THE ARTS.

Whatever Is, Is (Almost) Right

STEPHEN JAY GOULD

OPTIMISM: THE BIOLOGY OF HOPE. *By Lionel Tiger. Simon & Schuster. 274 pp. $10.95.*

Optimism is an indispensable concept, but it must be redefined in each generation to match changing moods. In more confident times, general theories of optimism tend to take one of two forms. One may assert that the world, for all its apparent misery, is really the finest place that rationality could conceive. I think of the various scriptural geologists of centuries past who argued that we must suffer the effects of earthquakes because these subterranean forces tilt the earth's strata and bring deeply buried layers of coal to the surface. This, of course, is the attitude ruthlessly satirized by Voltaire in *Candide*—a work that bears the subtitle "Optimism." Indeed, Dr. Pangloss, commenting on the great Lisbon earthquake that took 50,000 lives in 1755, exclaimed: "All this is for the best; for if there is a volcano at Lisbon, it cannot be anywhere else; for it is impossible that things should not be where they are." Or, alternately, one may assert that history has an upward direction and that current misfortunes must, of necessity, yield to later bliss. Thus, Condorcet, in hiding from the commission that had decreed his death, wrote in 1793 that "the perfectibility of man is really boundless, that the progress of this perfectibility, henceforth independent of any power that would arrest it, has no other limit than the duration of the globe where nature has set us."

But now we live in an age of retrenchment, and Lionel Tiger has written an optimism for our times. He frames an evolutionary argument based on the survival value of optimism and examines those ways of living that provide its major definition—a secure and happy sense of the future. We may achieve this desired state primarily by preserving familiar social arrangements and guiding the speed of our personal development along its proper trajectory—Tiger views childhood precocity as more of a danger than a promise or joy. Optimism arises most easily when we live as we are meant, biologically, to live; for then we achieve both predictability based on familiar repetition and a maximum concordance of life style with genetic constitution.

I am reminded of Gilbert and Sullivan's Utopia Limited—the happy island that floats itself as a company limited and then retreats from unreasonable bliss and efficiency when it acknowledges the inevitability of imperfection and reintroduces government, by party. Tiger does not advocate any stultifying constancy in society but his message is more in tune with a laid-back approach to human foibles than with the zeal of reform. If he does not approach Pope's criterion—"one truth is clear: whatever is, is right"—he does try to root conventional social practices in a biology that we would change at our peril and dismay. An optimism, in short, for an age of retrenchment.

Yet if the very concept of optimism changes so radically at different times in human history, then why should we assume that any modern version matches a biological truth rather than a primary response to prevailing social conditions? (Condorcet, after all, allied his belief in perfectibility to his concept of nature's path.) Tiger relies upon a dubious extension of Darwinian theory to carry his biological argument—a claim that his notion of optimism is a behavioral trait reviewed favorably by natural selection because it enhances the reproductive success of those who possess it. Following the theme of his earlier books (*Men in Groups* and *The Imperial Animal*), Tiger again calls upon big game hunting in a purely speculative exercise for reconstructing the original survival value of optimism: "Surely the workaday hazards of hunting large animals. . .would have given some impetus and advantage to persons willing to entertain the idea of a successful foray and to act on the basis of that idea rather than on the spectre of injury and failure."

I am not, I confess, much attracted to this style of speculative argument. Such claims cannot be proven, and they cannot be beaten, for a versatile mind can construct a potential selective advantage for anything. Unbeatable arguments are not much use in science. In this case, they lead to the kind of cocktail-party chatter that has given evolutionary science such a bad name among my sober colleagues in cognate fields. Indeed, Tiger plays this game for virtually all behaviors—anything reasonably common in our behavior must have some advantage. "We will begin with the possibility that any widespread behavior or phenomenon in the human populations must have served a useful survival function at some time and has not been sufficiently crippling or debilitating to be completely selected out of the human gene pool." Thus, society benefits by depression among some of its members, for "perhaps depressed persons slow down or otherwise inhibit social action. They may constitute a conservative force, particularly in communities undergoing rapid change and disruption." On the other hand, "the strident exuberance of the manic phase is an energizing and unsettling stimulus to communities otherwise too complacent and unchanging."

He even extends his parlor game to proposing an adaptationist story for a rare form of diabetes that permits the consumption of meat and vegetables only: "When requiring meat the patient is 'high'—supremely confident, untroubled by discordant circumstances and in general prone to decisive and grand action. Understandably enough, such people carrying such genes would be inclined to stimulate hunting or gathering for the particular foods they can tolerate. As such, they would be, in terms of their wider community, advantageous stimulants to useful action." But should one try to invent adaptive stories about cleft palate, Down's syndrome, or XYY? Such stories would not only be unprovable and merely silly, they would also direct attention away from a really interesting biological problem: What is it about the developmental mechanics of human embryology that leads the twenty-first chromosome (not the seventh or the nineteenth), with disturbing frequency, to produce three copies of itself (rather than the normal two) in a fertilized egg—thus causing Down's syndrome (formerly called Mongolian idiocy)?

But Tiger's evolutionary argument

Stephen Jay Gould is the author of Ever Since Darwin: Reflections in Natural History *(Norton).*

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contains an even more serious flaw, one that has always plagued genetic theories of complex human behavior. Is optimism a trait? Is it a thing with some genetic locus on our chromosomes? I am willing to believe that some highly stereotyped gestures found widely among the world's peoples—like the "eyebrow flash" of recognition—might be "things." But I am more than a bit dubious about happiness, optimism, bloody-mindedness and skepticism. I have enough trouble identifying the genetic basis of something so concrete as shell color in the land snails I study. How we parse the world is a function of where we are in history; it is not a "given" from nature or logic. Tiger gathers under the rubric of optimism a range of phenomena from betting to love affairs to drugs to vacations. His comments are often keen and compassionate, but they reflect his personal sense of unity and the ephemeral definitions of our age, not a biology deeply ingrained within us. I have always viewed the glass as half-full, watched the doughnut, and been willing to wade through piles of you-know-what to find the pony. But I rather suspect that these propensities are not located in a definite chemistry imparted by great-great-granddad who liked to hunt mammoths. □

Clurmania

On Sunday, May 6, some 600 friends and admirers gathered to pay tribute to Harold Clurman and to celebrate the opening of the theater named in his honor. Arthur Miller made the following remarks on the occasion.

ARTHUR MILLER

When I returned to New York from the University of Michigan in 1938, the luckiest fate I could have imagined would have been to have a play of mine produced by the Group Theatre and directed by Harold Clurman. Among the young writers I knew, Harold had more prestige than probably any other individual in American theater. He was not only a fine director, he was also a philosopher of the theater and the leader of its only renovative movement. From what one heard he was also an explosive talker, but that did not interest me at the time.

I never succeeded in attracting anyone's attention at the Group—they had already begun to disintegrate even without me. But about nine years later, as commercial Broadway producers, Clurman and Kazan bought *All My Sons*, and my friendship—or at least my astonished acquaintanceship—with Harold began. Kazan directed my play; like him, I was intensely anxious that every moment of it be definite and expressive. Harold was just as eager that the play make its mark but he had a characteristically different way of showing his eagerness. For one thing, while we paced around the office waiting for rehearsal time to begin each morning, Harold was sitting at his desk having his shoes shined by a particularly beautiful and adoring girl. One never felt the slightest exploitation here, for it was perfectly clear that, first of all, he would never have known how to shine his shoes himself, and secondly, that in his heart there was absolutely nothing but the sweetest slavery before the eternal feminine.

In fact, what has set him apart, at least for me, as a director and personage, is the absence of the wish to dominate and control, notwithstanding his enormous passions. He has held his actors transfixed by his talk, not only by the instructions in what he was saying but in the sheer excess of zeal with which he tore open his ideas, like a man late for a train pulling out all his belongings from a closet in search of his ticket.

A less systematic thinker is hard to imagine, or a more instinctive one. Harold arrives before the actor armed, and then proceeds to throw himself on his sword to show how it's done. This is no canny strategist, no sadist in disguise, no secret manipulator of the defenseless and trusting performer; it is a very old-fashioned thing to say about a man but true in his case—he has believed his function was to inspire. To the masochist he has always been a disappointment.

As a citizen of this century he naturally has had a most profound respect for the psychology of a play's characters and for the logic of subtexts and the irony of subconscious motives; he wants to move an audience, in short, and to make things real. But his aesthetic has always transcended mere verisimilitude of any kind. To touch the lyrical, the lofty, to take off in metaphoric lift toward that place where the vista is wide and long—these were always his goals. As with any other approach this has its price, its limitations. Harold is not at home with prosaic actors or prosaic plays. He has two characteristic gestures—he rubs his hands together in glee and anticipation, and extends both arms pleadingly. Sometimes he also throws up his face and howls to heaven, stamping his feet at the same time when an actor really persists in error. To all appearances he is a passionate man in disarray.

Yet he cannot be separated from his taste. It is not merely his disgust with excess but a sense of discomfort with the banal. To have preserved this structure of mind in a theater—any theater—but particularly one in which commonplaces are perennially celebrated as first-class discoveries meriting the nearly hysterical encomiums of his fellow reviewers, is no mean feat, and to do so without in the least giving way to despair is a near miracle.

As a commentator on the theater, Harold has no peer. For one thing—and it is incredibly important in our time, he doesn't care at all about being "right." Daily and weekly theater reviewers care very much about calling the shots accurately and being quoted in advertisements, their Olympus being but several inches high. Harold's pieces, quite alone among the many others, interest writers and directors and actors who sense the depth of his perceptions. He gave up citing masterpieces long, long ago, preferring to appreciate a show rather than to grade it like a side of beef. Again, he has eschewed power games, just as he did as a director, and seems not to have realized that it was his job to deny or approve any artist's ride on Parnassus. He tells what he saw and most of the time it is what is really there.

Nevertheless, I see no reason to deny that Harold can drive you crazy. He has no capacity to recognize a theatrical emergency; if he has ever been a leader it was because he loved more rather than because of a thirst for control, and so the truly recalcitrant could disarm him, and so on. But he always had a talent—once you thought about it—for never promising more than he was able to deliver. His friendship is solid, sound, a matter of mutual respect, but it is not the effusiveness which seems to portend an infinitude of acceptance which is always doomed to disappoint. As critic and equally as director, he was never in the oracle business and he is not interested in reducing actors or anyone else to a dependency on him or on some methodology whose operative secrets he alone in the entire world is able to manipulate and perceive.

His greatest failure has been to publicize himself, and it is fitting that the theater which is to bear his name will

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be small and a bit out of the way. May all the girls and women who play there remember that the spirit of the place, if it is indeed Clurman's, favors them perhaps over all other creatures, and may the men and boys believe that the sponsor of the house was a man of honor who admired the brave, a greatly tolerant fellow who could abide almost anything excepting those truths which cannot work the lock that opens the door to poetry in this, the most vulgar of the arts. □

Mumfordiana

MICHAEL SORKIN

MY WORKS AND DAYS: A Personal Chronicle. *By Lewis Mumford. Harcourt Brace Jovanovich. 560 pp. $13.95.*

Lewis Mumford is a leading exemplar of that vanishing breed, the generalist. In an age of specialist myopia, Mumford embodies an intellectual catholicity that is not simply out of fashion but nearly out of existence. Persons of letters, in the good old sense, are no longer the designated custodians of our culture: we prefer the Fred Silvermans and the Steve Rubells. The flip side of the present preoccupation with the cultural quick fix is the abandonment of continuity, of the kind of long view central to what Kenneth Clark fans would call "civilization." As Mumford wrote in 1921, "Civilization is the magic instrument by which men live in a world of time that has three dimensions: the past, the present, and the future. When neither security of life nor continuity of works is maintained, civilization must necessarily collapse." To preserve this "magic instrument" Mumford has labored like a cultural Houdini.

In *My Works and Days: A Personal Chronicle*, Mumford's twenty-seventh book, these twin commitments, to a rich and humane life and to the continuity of culture and ideas, are apparent everywhere. The book itself is a kind of mosaic memoir, composed of bits and pieces from a wide variety of sources, including letters, articles, diary entries, unpublished fiction, occasional verse and various other snippets, all collected by Mumford. These are loosely arranged by topics emblematic of Mumford's personal development, embracing such subjects as childhood recollections; associations with his early mentor, Patrick Geddes, and with colleagues like Van Wyck Brooks; relationships with both wife and lovers; the rise of Fascism; the wartime death of his son and his efforts on behalf of the revival of classic American literature. Taken together, these fragments constitute a kind of modest moral and spiritual autobiography, a portrait of a consciousness evolving. That consciousness is most remarkable for the continuity of its passions, for its unswerving openmindedness, and for its candor. It is in the nature of Mumford's kind of achievement that the whole is necessarily greater than the sum of its parts. While he must rank with Montgomery Schuyler as one of America's two preeminent critics of architecture and urbanism, and while his writing on art, literature and the place of technology in the scheme of cultural development is both incisive and insightful, his main greatness is in being Mumford.

Despite its embrace of a welter of preoccupations, Mumford's career has had a single focus: writing. However many subjects he has studied, he has been the practitioner of only one craft. Thus, there are two main fascinations with *My Works and Days*. First, of course, is the self-portrait and the portraits of friends, colleagues and enemies. These provide all the grist any closet psychobiographer might wish: Mumford is full of sexual candor and wit. But second, the book records the development of a stylist whose literary contributions have in some measure been overlooked. The writing is sturdy and fine and actually improves measurably over the course of his career, becoming more relaxed, lucid and elegant with time. A writer's curiosity leads him to experiment with a wide range of forms and techniques. One section of the book contains a series of excerpts from *The Little Testament of Bernard Martin*, an experimental novel written in 1926. The subject is vaguely autobiographical and the prose is rhythmical and alliterative, a modification of an earlier version in verse. While hardly a major work of modernism, *Bernard Martin* is full of rangy energy and vigorously constructed sentences.

Mumford is also a master of epigrammatic writing and this book abounds with well-focused comments and descriptions. A 1931 letter to Babette Deutsch details a visit to the University of Virginia and summarizes his impressions of its denizens: "The Southerners themselves are exactly like the Old Regime in Russia as portrayed by Tolstoy and Chekhov: lazy, slow-moving, torpid, imperturbable, snobbish, interbred, tolerant of dirt, incapable of making effective plans or organization." A 1934 *New Yorker* review of a show of Alfred Stieglitz contains this passage: "There is an astringent quality in Stieglitz that has escaped his admirers. He has been nourished by his hates as well as his loves; he has never cultivated that harmless good nature which is responsible for half the stupidities of American life. Stieglitz's demonic negations are part of his deepest vitality; they play the same part in his personality that the blacks do in his prints. As well think of Stieglitz without these dark elements as think of Melville without Moby-Dick and Pierre. I emphasize these personal qualities of Stieglitz because his photographs are not alone his work but his life." He might have been writing about himself.

If one thing comes through in a reading of a selection of Mumford's work, it is his great generosity, his critical broadmindedness. Yet beyond this there is a rage for improvement, for the genuine progress of civilization. For Mumford, our mess has sprung from the perverted notion of progress first spawned by the Enlightenment, the Woodstock of the modern mind. While standing firmly for democracy, rational discourse and the scientific method, he is full of fearfulness about the misapplication of that spirit. Indeed, as he writes in "Prologue for Our Time," the biting essay which begins the book, "If the forces that now dominate us continue on their present path they must lead to the collapse of the whole historical fabric, not just this or that great nation or empire." These forces, the pseudo-rationality that everywhere dehumanizes, the false sciences, the murderous totalitarianisms of "Stalinism, Nazism, Nixonism," Mumford denounces with the awareness of a lifetime that has encompassed all of these disasters, that has unfolded parallel to history's most unspeakable horrors.

But, while the testament may be grim, Mumford's outlook is always affirmative, sensual and *civilized*: "To flinch now from facing these realities," he writes, "is to me an act of intellectual cowardice. But because I have dared to face and evaluate them I have often been dismissed as a 'prophet of doom.' This is no more intelligent than to say of a physician who diagnoses a possibly fatal disease and applies his skill in curing it that he is a willing ally of the undertaker. On the contrary, every fibre of my being revolts against the fate that threatens our civilization, and revolts

Michael Sorkin is a New York writer whose work appears in The Village Voice.

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almost equally against those supine minds that accept it as inevitable, or, even worse, seek treasonably to justify its 'inevitability.' " Surely, this is an analogy that would have pleased the leading figures of the Enlightenment, who first perceived that all truly progressive people were perforce social physicians, ready to apply corrective therapy to the body politic, to cure it of such diseases as threatened the freedom of the human spirit so that all might enjoy what Mumford calls "the feast of life" to the fullest.

In an address delivered as president of the American Academy of Arts and Letters in 1965, Mumford eloquently denounced the genocide in Vietnam. He closed with two lines from *King Lear* which perfectly express the credo that has governed his own life:

> The weight of this sad time we must obey:
> Speak what we feel, not what we ought to say.

□

ART

LAWRENCE ALLOWAY

Artists Space, a largely state-funded gallery on Hudson Street, formerly on Wooster, recently showed a group of collage and charcoal drawings under the title of "The Nigger Drawings." The unknown white artist was certainly baiting straight society, and on March 5 he got the first response, an open letter signed by a dozen art-world people. What is extraordinary is that the gallery, supposedly an alternative space, agreed to exhibit this racist gesture in the name of freedom of speech. In a reply to the open letter the artist compared himself to "D.H. Lawrence, Henry Miller, William Burroughs and others." Which others, Larry Flynt?

Artists Space provided an apology—an insolent one. "We made an error in assuming that this word could be legitimately used in an art context. In fact, it appears that to many its use is categorically unacceptable. We are sincerely concerned that individuals should have been offended by this occurance [*sic*]." That was March 10 and on March 26 the board of directors of Artists Space wrote to their chief source of money, the New York State Council on the Arts. "We recognize that an error of judgment was made," the board conceded but, to paraphrase the letter, since 1972 Artists Space has spent $120,000 on art; therefore, the organization deserves the council's tolerance. Thus, the board supported the director of Artists Space, Helene Winer, with a language as complacent and unfeeling as hers in the apology. It is depressing to consider the makeup of this board. There are three artists, Vito Acconci, Mary Miss and Dennis Oppenheim; two curators, Jane Livingstone and Kynaston McShine; one critic, Irving Sandler, and a dealer, Donald Droll, all of whom appear to put the defense of punk playfulness above the fight against racism.

Criticism of the commercial art gallery as an institution has reached a climax lately but there is not much hard information available. A welcome start has been made by two researchers, Nancy Jervis and Maureen Schilds, in the April *Artworkers News*. In a sample of forty galleries, they discovered that 73 percent of the artists were men and 27 percent women; these forty galleries also showed 2.5 percent Asian artists, 1.7 percent Hispanic and 0.7 percent black. This disproportion is not the result simply of unilateral decisions by gallery directors. Jervis and Schilds point out that artists rarely get into galleries by coming in off the street and showing their slides cold, or by being spotted in group shows. The most effective route of entry is that of personal referral, and artists in particular are influential. Artists thus help to shape the art world not only by the work they do but by the friends they recommend to their galleries. The personal milieus of artists, individually free and liberal, change their meaning as they are perpetuated by galleries in a public context.

Jervis and Schilds's "Survey of N.Y.C. Galleries Finds Discrimination" is a part of a CETA project, a Task Force on Discrimination in Art, sponsored by the Foundation for the Community of Artists, which publishes *Artworkers News*. More of the task force's research is promised in the May issue. The monthly newspaper is obtainable for 85 cents from the Foundation for the Community of Artists, 280 Broadway, Suite 412, New York, N.Y. 10007.

Recent painting and sculpture by Ellsworth Kelly are on view at the Metropolitan Museum (until June 24). His clean-cut planes in ravishing monochrome are as subtle and austere as ever, and the way they occupy space, the points between wall and floor, is perhaps more dynamic than before. When Henry Geldzahler was curator of contemporary art at the Metropolitan, he put a lot of Kelly into his exhibition "New York Painting and Sculpture: 1940-1970" and the present show was conceived by his successor, the late Thomas B. Hess, in his capacity as consultative chairman of the Department of Twentieth-Century Art.

The situation can be viewed in one of two ways: either Kelly is so good that his work demands repeated acknowledgment by the same museum, or the museum is endorsing its own taste, keeping art where it was. I like Kelly's work, I own a few of his lithographs, but is he the living artist one would most want to see at the Metropolitan? If the museum is going to show modern art, there are many artists who should be shown there for the *first* time before Kelly is shown for the second. There is a tyrannical aspect to the stasis of museums' taste. They all want to show modern art; they are under pressure from the art community to do so, but unfortunately, they all want to show the same artists. Kelly, for instance, had a retrospective at the Museum of Modern Art in 1973, around which time two sumptuous picture books on him were published, as well as the Modern's catalogue. The present show has the status of a self-confirming footnote.

I went to the National Archaeological Museum in Naples two years ago to look at the art of Pompeii. Some of it was there, the battle mosaic of Alexander and Darius, for instance, but much was not; it had been removed for packing for the touring exhibition "Pompeii A.D. 79" which can be seen at the Museum of Natural History (until July 31). The paintings denied me at Naples, including those of Pan, Europa and Theseus, as well as landscapes and still lifes, are at the Museum of Natural History now. I make the point because the exhibition, though well received as an evocation of life in the dramatically terminated city, has not perhaps been equally appreciated as an art exhibition. The catalogue entry for a "Wall Painting: Erotic Scene" notes that "although erotic subjects played a small, private part in the art and life of Pompeii, scenes such as this have done much to influence the modern image of Roman decadence." To this can be added the fact that since Pompeii was a resort town, its art is lyrical and informal, and missing those great sources of artistic respect, the heroic and the metaphysical.

An art of pleasure, an art of summer, can do more than we are accustomed to expect, especially in the wall paintings. A daunting chronological style analysis

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is usually applied to them, but the different phases have a common outlook. There is a shared orientation toward the life of the senses expressed by means of play with the objects, incidents and space of the world. An alliance of the everyday and the lyrical underlies the atmospheric impressionism of the "sacral-idyllic" landscapes, the informality of narrative and the paintings of fantastic architecture. In these Pompeian works, architectural ornament is used to keep a sober sense of human scale at the heart of flighty structures. □

THEATER

HAROLD CLURMAN

Years ago (I won't name the exact date), Lanford Wilson's *Talley's Folly* (Circle Repertory) would not have been considered a play. Even today, the author advises the audience that what he has written is a "waltz." (The tempo of speech is rather more rapid than one might anticipate.) The piece contains almost no plot in the ordinary sense of that term. Nevertheless, we are charmed.

Talley's folly consists in her falling in love with and finally consenting to marry a most unlikely suitor. Sally Talley is her full name: she is the daughter of a family of WASP snobs in Lebanon, Mo. What distinguishes them is their money, not their sound character. They are prejudiced against people less affluent than they, as well as against people suspected of radicalism (anyone more politically advanced than McKinley), foreigners, Jews, blacks and New Yorkers—all of whom they identify as "outsiders." The time is 1944 and the "waltz" corresponds to the author's memory of his early (native) environment.

The Talley girl does not share her folks' narrowness: she is a more or less cautious rebel, attracted to Matt Friedman, a Jewish accountant from St. Louis. He is a live spirit, quick-witted, of unusual common sense. He is no heroic figure but he is fanatically devoted to nice-looking, blonde, wispy Sally. In many respects, they do not seem a compatible couple: their worlds are too far apart.

She resists him in spite of her inclinations because of the difference in their backgrounds. Her family would never accept him, and there is still another reason for her initial rejection of Matt, but that need not be divulged here. The play's "story"—insofar as it has one—deals with Matt's wooing and Sally's yielding to his comic but fervid courtship. In *5th of July*, Lanford Wilson's 1978 play (also set in Lebanon, but in the present), we gather something of the history—told with cockeyed affection—of the Talley-Friedman marriage.

Talley's Folly is sustained by the engaging humor of its writing and the excellence of the acting. Wilson, who was born in 1937, is a prolific playwright and his plays (best known is *The Hot l Baltimore*) vary in large degree in form and content. But their keynote is a tenderness subdued and masked by quizzical objectivity. Wilson harbors a special sympathy for oddballs of every sort, but this is usually held in check in an effort to avoid outright sentimentality. The eccentrics of Wilson's plays move toward one another to find a center.

Matt Friedman and Sally Talley are both "offbeat" figures. We like them both, and we enjoy Wilson's attitude toward them. This is especially true because Judd Hirsch plays Matt with a fluency and zest and an unassumingly relaxed command which give assurance that Matt is a right guy and (incidentally) that Hirsch is a thoroughly professional actor. His Matt inspires confidence, so we are eager for Sally to share her life with him.

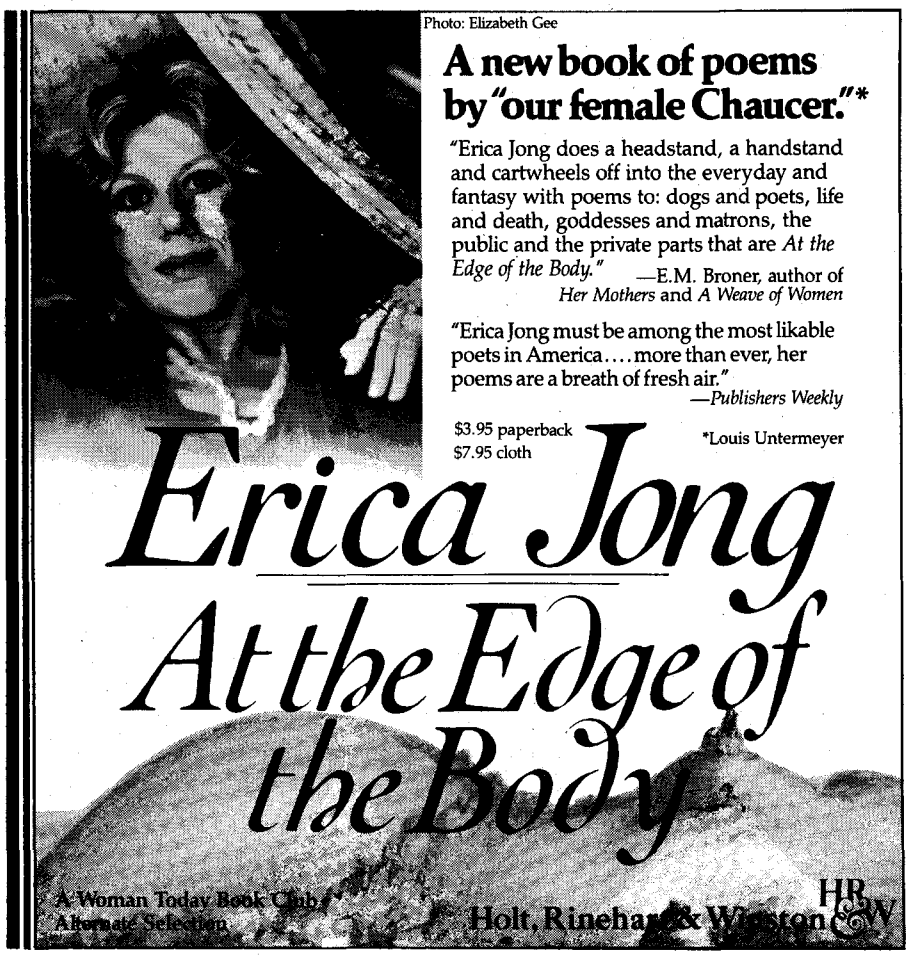
Trish Hawkins is perfect as Sally: she imparts that quotient of neurosis that *redeems* the class of people in which she was bred. Her slightly pallid prettiness lends her an air of conventionality behind which we discover much hurt. □

FILMS

ROBERT HATCH

After the stunning success of his early films, notably *The Last Picture Show* and *Paper Moon*, Peter Bogdanovich seemed to lose his touch and his way, and the critics, disappointed in their new directorial star, savaged him. With *Saint Jack*, they have swung the other way, hailing the new work as a great comeback. I think the pendulum is a bit out of control.

Saint Jack is a workmanlike entertainment, but it lacks individuality and, except for the presence of Ben Gazzara, who throws himself into the seamy title role like a hungry man wolf-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ing a steak, it would probably have opened in the neighborhood houses. The setting is Singapore toward the end of the war in Vietnam, and Jack Flowers is the hustler to see if you're looking for action of the sort you would as soon didn't come to the attention of the authorities or the folks back home. Jack is a small-time operator, taking a cut here, making a commission there, bringing people together, carrying his office around in the pockets of his flowered shirt. He opens a pleasant enough whorehouse, but the local mob wrecks that enterprise; he then becomes resident manager of a rest and recreation center for combat troops, which is another kind of whorehouse, this one underwritten by the United States taxpayer.

In short, Jack is a sorry rascal, moving fast to make ends meet in a dangerous and picturesque city that may indeed be Singapore, but could as well be Casablanca, Algiers, Marseilles or other sink of exotic sin dear to film makers. He's honest enough to recognize that it's a dirty game, but it's the only game he knows (his "front" job as a ship chandler's runner would scarcely pay his bar bill). However, there are limits, as there usually are in films about attractive rogues. Jack draws the line at heroin for war-weary G.I.s and he draws it again when a C.I.A. agent (played by Bogdanovich, who clearly dislikes the breed) hires him to frame a visiting Congressman displeasing to Richard Nixon. Jack takes the all-too-candid snapshots, but refuses to deliver them, and when we last see him he's striding along the waterfront with the bouncy gait of a man newly washed in the blood of the lamb.

Saint Jack employs the dubious device of editing an obvious plot a bit elliptically, the better to keep an audience on its toes. But Gazzara is fun to watch, and the beautiful girls, deadpan street boys and sinister alleys are as enigmatic as Fu Manchu. Bogdanovich has shown, at least, that he can turn out a crowd pleaser; now I hope he'll once again do something surprising.

It's a fact of merchandising that really good, small pictures sneak into New York almost unnoticed, while movies of routine extravagance get feature stories, solemn reviews and lines at the box office. A recent example was *Tracks* (*The Nation*, March 17), and currently, a screen version of Joyce's *Portrait of the Artist as a Young Man* has been playing to almost no attention. It is physically beautiful and thoroughly aware of the intent and method of

Prize-Winning Poets – 1979

The winners of "DISCOVERY—*THE NATION*, '79," are Nancy Esposito, Jane Flanders, Marea Gordett and Susan Mitchell. They read their poems on Monday, May 21, at 8 P.M. at The Poetry Center, 92nd Street YM-YWHA, 1395 Lexington Avenue. The contest was judged by Richard Howard, Stanley Kunitz and Cynthia MacDonald. Now in its fifth year, the competition represents a fusion of The Poetry Center's "Discovery" contest and *The Nation*'s Poetry Prize. It is designed to attract larger audiences for new poets through the combined media of publication and poetry recital.

More than 1,400 manuscripts were received for "DISCOVERY—*THE NATION*, '79," which was open to poets who have not been published in book form. The winners were chosen on the basis of a body of work rather than on individual poems.

For publication in *The Nation*, we chose four from the winning groups of poems.

—Grace Schulman, Poetry Editor

MOSS

Moss is one of the old ones.
Before fish crawled out of the sea,
moss did it, from eon to eon,
the first green thing that learned to walk.

Before flower, came moss.
Before grass.
Before tree—moss *was* tree.
Before moss was only sun, wind, rain.
Moss ate all of them.

Moss is direction-giver,
the quiet one
on the other side of the trunk.

Every day moss is a different green.

If you stuff your pillow with moss
you will dream of first love.
If you eat moss, you may sprout horns.
If you conceive while lying on moss
your child will live hundreds of years.

Moss is the fur of stones.

Moss married itself and has never
regretted it, spitting its children out
like teeth. (The ancestors
of moss are unknown.)

Gradually moss has learned humility.

Mothers line cradles with moss.
Birds build their nests with it.
Men cram it in chinks to keep out the cold.
The world is sustained by moss.

Even moss, with its tiny spears,
is always afraid.

Moss has no songs or stories,
no expectations.
Moss means to go on just the same.

Jane Flanders

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THE YARD GEESE

In my aunt's yard
the geese grew thick as bushes. Each spring
they flapped up white
beside the hydrangeas and hawthorn.
Where the yard sank under puddles
they snapped at grass and old clothesline. Or sniffed the air.
Miles away salt marsh croaked and honked.
Webbed feet broke the water surface.

Mixed with the familiar yard smells
with car fumes and fresh coffee and incurable damp
was a new smell—alien, enormous.

All along the eastern Chesapeake geese were splashing down.
Under feather stubs the yard geese felt it—the river.
Behind their eyes they saw it. It shook like blood.
Deep in goose bone, cattails shivered and broke.
The yard geese spread pinioned wings.
They ran. They lifted. They fell back.

Deep in my thigh flesh
goose teeth sank down and refused to let go.
Saliva hissed in my throat.

Cuffing his head and wings
my uncle pulled the gander off me—
the big one who always took corn from my hand
so delicately
his bill had no more weight than a leaf.

In the kitchen my aunt boiled water.
The soap shone red.
The doctor who sewed me up
put in seventeen stitches straight as a picket fence.

Outside, the gander with great precision
leaned sideways
to nip a blade of grass,
then shuffled off on rhubarb legs.

Susan Mitchell

WATCHING OFF PROVINCETOWN

Finback
Humpback
Minke
Right
Upright, we abandon
our landlocked assumptions
and seek them
where they also do not question.
Untethered, unrehearsed,
they feed, we see,
glazed sickles
cutting through a rocking field
to a washed harvest while
scavenger gulls
a helix of dolphins
signal the whirled surface,
lazy as a pond
in that ocean meadow.

That giant foam before the dive
remembers drier, firmer ways
a long air simply
life, in fact, like our own,
not a pelagic call for help
a binocular sighting
inviting us to solipsism.
We return to dock, steady
in our deck shoes
under our canvas sailor hats,
resting their hulks now
in the narrow slip of our experience.
Free of other verbs
our modifiers
they feed, it is clear,
winnowing out their liquid homes
beneath the grazing darkness.

Nancy Esposito

FAMILY LIVING IN ABANDONED CAVE

Someone is writing a story with a stick
and someone is erasing it.

Dust is in the air
and on their faces dust

gathers in a storm. *Rain*
is falling, a woman says, *it is falling*

still, and what is left on the wall
is thunder. Children are playing

in the corner by an unmade bed
and on a table, a pot of flowers.

A strange name is on the woman's lips;
Amittai perhaps, and she wants to touch the man,

wants to press her tongue
to his skin, but the air is choking, full of dust,

the children go on playing.
She is trying to remember the words of a story

she heard once about a man trapped
in a cave with his wife. In the darkness

he fashioned instruments with a bone and wood
and she sat playing music. She loved

the sound of his patient carving
and he loved her voice, but when they were found

it hurt him to see her body,
she hated his spider legs, his hair grown wild.

Then they were quiet. They never spoke.
In the slant of light children went on playing

games, drawing pictures in the dirt,
without malice.

Marea Gordett

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Joyce's novel. Most important, it has in Bosco Hogan a young actor who manages, I think brilliantly, to look and speak like Stephen Dedalus. He suffers doubt, succumbs to sin, wrestles with the angel of obedience and steels himself for the greatness he knows to be his fate. He has a face of whey and a smile that comes out joyous or crooked as the case may be; he speaks Joyce's lines from the heart. Dedalus grows on the screen as he grows in the novel, and it is an inspiriting sight to watch him at it.

Of course, the movie is not the book. The job was less formidable than the screen translation, a few years ago, of *Ulysses*. Joseph Strick, who directed both films, could do little more than give lyric praise to Joyce's masterpiece. *Portrait* is a less intimidating book, and much shorter; but it is packed with arresting ideas, and illuminated by images drawn from the heritage of art, the speculation of saints, the plight of Ireland and the landscape around Dublin and Cork. The film must select and condense; its responsibility is to do so scrupulously and with understanding. In this respect it succeeds splendidly, and you may find, as I did, that it sends you to read the novel again with sharper eyes and a more appreciative mind. Strick has made a captivating and useful film.

The Australian film *Newsfront* (Phillip Noyce, director) is a tricky one to rate; it is well acted, naively plotted and clumsily edited. In its favor are the insight it gives into life in Sydney a generation or more ago (parochial, verging on prudish) and a sunny assurance about life that nowadays is seldom recorded on the screen or anywhere else.

The principal characters work for, or are married to, employees of Cinetone News, a small national company that competes with Newsco International, a firm with United States backing. The time span is 1948 to 1968; that is, up to the takeover by television, when newsreels disappeared from the movie screens. Cinetone's top team, a veteran Australian reporter (Bill Hunter) and a young cockney just out from England (Chris Haywood) cover breaking news events that are in part derived from old footage and in part re-enactions: political speeches, ship arrivals, floods, auto races, etc. (The picture jumps from black and white to color according to a logic I could not decipher.) The story also embraces company politics, the cold war, amorous escapades and marital conflicts. *Newsfront* is something of a curiosity. If you will accept that it is innocent and a bit rough in execution, it will repay you with a generally high level of performance and an insight into what Australia was like not so long ago. □

DANCE

NANCY GOLDNER

Nightshade, a new dance by Paul Taylor, is calculated to provoke, and then to mystify. Adorned with all the ornamentation of high Victoriana, *Nightshade* is like a plotless Gothic novel. It is enough, Taylor seems to be suggesting, to fill the stage with shadows, smoke and the right mix of characters: succubi and incubuses, and their victims. As a suggestion of menace, it is enough for the characters simply to lurk and vanish, strike emblematic tableaux, brood with their backs facing the audience. *Nightshade*'s telegraphic choreography teases one in the tradition of the conventional *ballet d'atmosphère*. Studied obscurity can always be passed off as wild dream. (It's when the action is transparent in illustration and opaque in explanation that we've got a real thriller.) Yet in its attention to details like social class, *Nightshade* goes beyond atmosphere and teasingly sets up scaffolding for plot. In a sense, the dance awaits the machinations of an Edward Gorey to jiggle the characters into action more explicitly than Taylor has chosen.

That Gorey comes to mind is a measure of the dance's hokey fevers as well as of the genuine pleasure it takes in being fancy-dress enigma. *Nightshade*'s central enigma, however, does not concern (lack of) action. It concerns attitude. Is it an earnestly conceived depiction of mankind's "private domain," to borrow a title from another Taylor dance? Or is it another of Taylor's sly send-ups? If so, to what height is Taylor shooting his arrows? It's possible to regard *Nightshade* less as in need of a Gorey libretto, more as a parody of Gorey method. I would like to think *Nightshade* a commentary on Martha Graham, and, better still, on the Scriabin which accompanies the dance. Graham crops up as soon as one can make out the dancers' dress through the dim shadows. With their odd mixture of sedate color and flamboyant historicity, the costumes immediately place *Nightshade* about 100 years later than its intended period, to the moment of Graham's *Deaths and Entrances* (1943). And as Taylor's dance whirls by in passionate gloom, it's not merely Graham's subject but her treatment of the tempestuous Brontë family that rings bells. *Deaths and Entrances* is the dance in which Graham's idiosyncratic world view found its most esoteric crystallization. Plunging her thumb deep into the psyche, she pulled out a seashell. *Nightshade* just might be a burlesque of that process, blithely dispensing with situation and motivation but traipsing out all the iconography. It's amusing to see *Nightshade* as a smorgasbord *Deaths and Entrances*, and interesting to gauge the affectionate/critical ratio behind Taylor's gloss. Scriabin is not as easy a target as *Deaths and Entrances* but one far more worthy of satire. Supposing that Taylor is exposing the Graham dance as dime-novel folderol, he still cannot divest it of its genuinely mysterious, as opposed to atmospheric, center. It's called a masterpiece for good

HERB GARDEN

Basil leaves, like poured wax seals;
Hundred-branched candlestick
Of the flowering thyme,
Bee-visited, in a fume
Of gnats. Parsleys, mints, dills;
The green watering can.
Skies, water this side Mystic.

August places its bets:
Ice on blue, fire on green.
Full grown, beyond regret,
The leaves flare and coldly burn—
Spilling five pungent oils
For this bright encaustic,
Emerald flashing marine.

Alfred Corn

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Edited by Philip S. Foner

I regret that in the 1978 edition of *Paul Robeson Speaks,* I included speeches and writings by Paul Robeson from several sources to which I failed to give acknowledgement and credit. These errors are listed below and I offer my sincere apology to the sources listed.

1. *We Must Come South* (pp. 142-143).
2. *China, The Promise of a New World* (pp.155-156).
3. *Excerpts From Testimony Before the Tenney Committee* (pp.178-180).
4. *Fight We Must* (pp.381-386).
5. *Statement to House Un-American Activities Committee* (pp.433-435).

These excerpts are appropriately to be designated "Paul Robeson Tributes, Selected Writings": Publisher, Paul Robeson Archives, Inc., 1976.

In addition, *Thank God Almighty We Are Moving* should be properly attributed to *Here I Stand,* second edition, 1971 (pp.471-473), published by Beacon Press, copyright holder, Paul Robeson, Jr.

Signed,
Philip S. Foner.

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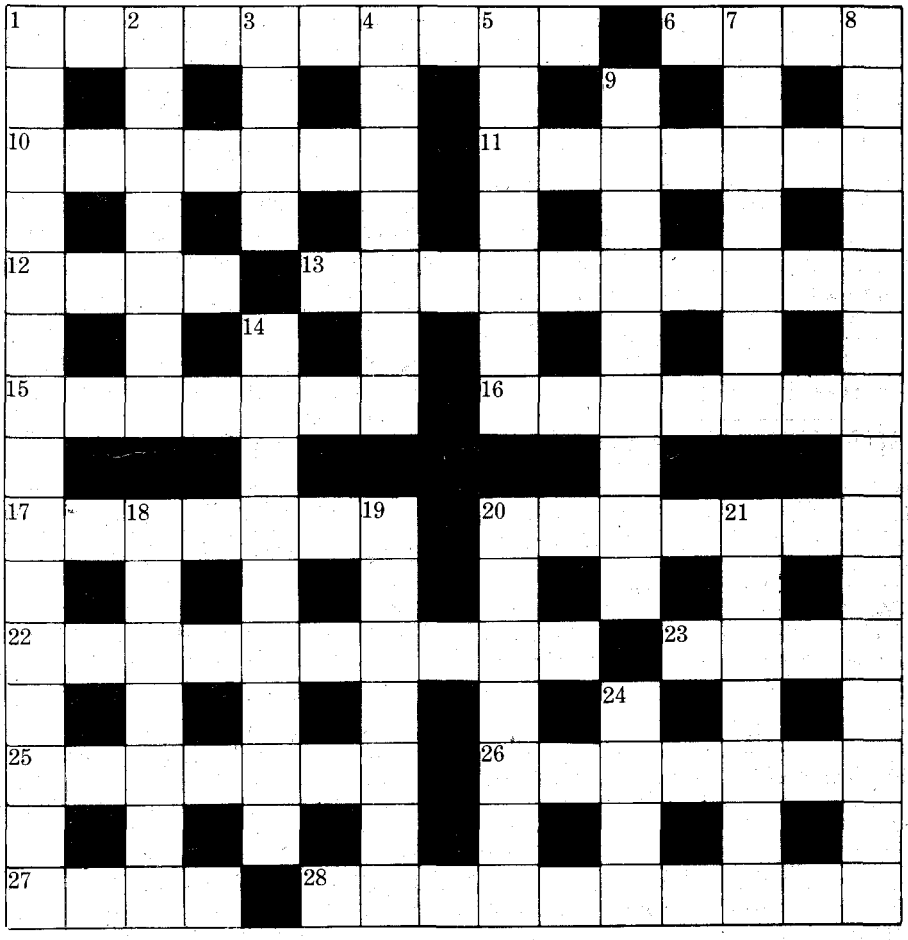
reason. Reading *Nightshade* in the most wicked way possible, Taylor does in fact reduce Scriabin to navel-centered esoterica. If I'm seeing *Nightshade* right, it's about spending too much time in a hot bath. It's not about gloom, it's about the sulks.

The degree to which Taylor pokes Graham in the ribs and demolishes Scriabin admittedly depends on the force of the viewer's prejudices. For all I know, *Nightshade* might be a perfectly straight-faced extravaganza on what is commonly called the "dark side" of life. Maybe Taylor thinks Scriabin's dark doodlings profound. Two things for sure: *Nightshade* is not cheerful and, considering the rest of the Taylor season at the City Center, its uncheerfulness was a welcome change of tone. Taylor has been rightly acclaimed for lifting modern dance out of its "doom-eager" rut, out of Graham-Jung preoccupations. Along with Merce Cunningham, he found ways for dancers to move lyrically and quickly. Taylor alone became a specialist in developing dances and dancers of fresh amiability. The season, however, seemed intent on projecting a nice-guy image. What I noticed most about the dancers was not their speed and energy but their ingratiating smiles. With the exception of *Private Domain*, which despite its unpleasant content is as beautiful as anything Taylor has done, the repertory seemed calculated toward fun and frolic. Whereas an exuberant dance like *Esplanade* once took equal place within a community of dances, it now seems to be the bow of the package. It's distressing to have to watch the Taylor company as a package deal, with *Esplanade* as the payoff. Alvin Ailey's audiences need to see *Revelations* in order to rest assured they've had the "Ailey experience." There's a danger of *Esplanade*'s becoming that kind of self-serving signature, and of new dances such as *Diggity*, a second première this season, being measured as only more or less hot-diggity-dog than the very diggity *Esplanade*. Although *Nightshade* is at best of passing interest, and then only because of the possibility of its satiric intentions, the relief with which one greets its unfriendly stance is symptomatic of Esplanadomania. A chronicler of the Paul Taylor company would rightly mark the 1975 *Esplanade* as the dance that got the company out of a financial hole. Four years later, the company appears to be using its good fairy as a way to get back into a hole. Which is worse, a financial hole or a pigeonhole? □

Crossword Puzzle No. 1775

FRANK W. LEWIS



ACROSS

1 and 6 English writer Raleigh gets a bad deal with a horse. (6,2,2,4)
10 A baseball player in the boxing arena? No wonder it's falling into decay! (7)
11 The root of the trouble, in case of the lad Eric. (7)
12 Signs a contract, according to some sports writers. (4)
13 Whom are we supposed to love here at noon, by arrangement? (3,7)
15 See 18 down
16 Implies everyone in the theater is rather superficial. (7)
17 First class liner, stem to stern! (One often travels by it.) (7)
20 The thing D. H. Lawrence used in his title is supposedly a promise. (7)
22 Where dice have markings everywhere. (2,3,5)
23 Not the color of the old 6—unless it's Latin. (4)
25 Like insignificant tales in Macbeth. (7)
26 Myrtle does, according to Clementine. (7)
27 With Goya, composition should be self-illuminating. (4)
28 According to the present condition, sits (and sat) awkwardly. (2,2,6)

DOWN

1 You'll never find most people idle with this—a happy state of affairs if the politician has it. (7,8)
2 Once Laodicea (until it went up in smoke?) (7)
3 He goes out in classical style, and about eleven, too. (4)
4 Sirenians of the French clanger type. (7)
5 Stair-climbing under the French might be necessary for those who like to throw the bull. (7)
7 Most co-hosts in all surroundings supply hard liquor. (7)
8 Look at little brother putting on a little weight—very little! Nothing, nothing gone south to keep that supercilious appearance even! (7,8)
9 In 25, a further degree characteristic of language. (9)
14 Let social changes swing back and forth. (9)
18 and 15 across What Russian gypsies might be doing with tea leaves? (One might be short-sighted not to want them.) (7,7)
19 Shows clearly how Scene IV is conconstructed. (7)
20 What CREEP was meant to do. (7)
21 Liegeman, possibly. (7)
24 This sign might mean to leave something 28. (4)

SOLUTION TO PUZZLE NO. 1774

ACROSS: 1 On the face of it; 10 Newsman; 11 Cheerio; 12 Taste buds; 13 and 22 down Interacts; 14 Uncial; 16 Prenatal; 19 Greedily; 20 Asides; 22 Amati; 23 Empirical; 25 Trickle; 26 Onagers; 27 Order of battle. DOWN: 2 Newts; 3 Hammer and sickle; 4 Fondue; 5 Cocksure; 7 Irritated; 8 Unstrung; 9 and 6 Your obedient servant; 15 Chevalier; 17 Listless; 18 Alter ego; 21 Aplomb; 24 Creel.

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